RECOGNITION:

A CHAPTER FROM THE HISTORY

OF THE

North American & South American States,

BY

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RECOGNITION.

THE object of these pages is to give an account, at greater length than is possible in a Treatise on International Law, of the two cases, in which the principles have been most fully discussed that govern the Recognition, as a Sovereign State by other States, of a province or colony which has revolted from its parent State, and has erected itself into a separate community.

The first of these cases is that of the Recognition of the Independence of the United States by France in 1778; the second, that of the Recognition of the Independence of the States of Spanish America by the United States in 1822, and by England in 1825. They are the leading cases of International Law on the subject of Recognition. The first has found a place in the Causes Célèbres of Martens; the documents illustrating the second have not been collected in a separate form. In their circumstances they are widely different: but each has an interest of its own; each marks an epoch in history; and a comparison of the two will enable us to trace the progress of International Law, till its principles and practice on the subject of Recognition may be considered to have become settled. Taken together, these two cases make up a chapter from the history of the North American and South American States containing an account of the foundation of their independence, an angry correspondence and "models and master-pieces of diplomatic composition," and the worst precedent and the best precedent of Recognition.

America is at this moment furnishing International Law with a third leading case on the same subject. The secession—for secession under a claim of constitutional right, if

resisted by the parent State, is, as far as other nations are concerned, revolt — the secession of the Confederate States has forced the question of their recognition as an independent State upon our consideration; and the consideration of that question has already produced so much discussion on the principles of Recognition, that nothing really new remains to be said. Both the precedents mentioned above have been again and again referred to. Still, though nothing new be said, the subject will continue to be discussed until—for we cannot suppose any other termination—the actual recognition of the Confederate States. Many are called upon to form an opinion, who have not access to the treatises, in which the maxims now acknowledged among nations as their guides, are stated; and still less to the sources from which those maxims are drawn. My wish is, to be of use to those who are anxious to consult the original authorities for the principles of International Law on the subject, and to learn the past policy of this country, but who have not leisure or opportunity to search the volumes of the State Papers published by the Foreign Office, Martens' Recueil, or the other sources of reference. With this view, I have put the notes of my own reading in a form available for others. They consist chiefly of passages from original documents, especially from the documents relating to the recognition of Spanish America. Should the passages appear long, it must be remembered that a passage imperfectly quoted is worse than useless as a reference. My own experience is, that there is more often reason to complain of the shortness than of the length of a quotation.

It is not for a moment supposed that precedents from the past will prove infallible guides for the future. A subsequent case seldom occurs precisely similar to a previous one. But by examining the precedents, we shall find the principles that have been established; and there can be but one opinion as to the importance of adhering strictly to those principles in practice. The influence of a country in its foreign relations depends almost wholly upon the clearness of the principles which it adopts, and the consistency with which it is known to carry them out.

Recognition is a chapter of International Law of comparatively recent introduction. The subject has grown in importance with the expansion of the Rights and Duties of Neutrals. Consequently, the earlier text writers contain but little upon it. Recognition was in their time a step towards, or a kind of, Intervention. The measure can obviously be adopted with this view, and cannot then be distinguished from intervention. It must be interpreted according to the intention shown by the surrounding circumstances. The recognition of the revolted province may be made in such a manner, and under such circumstances, as actually to have the character of a hostile act to the mother country. Such was the recognition of the United States by France, in 1778. Again, without going so far, it may be a moral intervention. The recognition may be intended to show the sympathies of the country recognising, in favour of the revolted provinces, and thus to afford whatever moral help this expression may carry with it towards the establishment of their independence. A judgment on the merits of the dispute between the province and the mother country may thus be given, which may wound the susceptibilities of the latter, without amounting to an act of hostility. But neither of these courses can be called absolute neutrality.

The discussions of the earlier writers took the direction thus mentioned, because their attention was turned to the circumstances which justify intervention. The precedents before them were those of actual or moral intervention. Vattel wrote with the example of William of Orange before his eyes. His remarks, from which subsequent writers have borrowed, are not very clear or consistent; but they show the degree of distinctness which the law had attained, and the propositions established at the time of the publication of his book. In the first place, he states the conditions justifying intervention, and adds,—

" Whenever, therefore, matters are carried so far as to produce
" a civil war, foreign powers may assist that party which appears
" to them to have justice on its side. He who assists an odious
" tyrant,—he who declares for an unjust and rebellious people,—
" violates his duty. But when the bands of the political society

" are broken, or at least suspended, between the sovereign and " his people, the contending parties may then be considered as " two distinct Powers; and, since they are both equally inde- " pendent of all foreign authority, nobody has a right to judge " them. Either may be in the right; and each of those who " grant their assistance may imagine that he is acting in sup- " port of the better cause." *

2ndly.—" Those who thus assist either side are entitled to be " treated on the usual footing of enemies in general, and, accord- " ing to the laws of war, as auxiliaries in a regular war."

3rdly. He says,—

" After having established the position that foreign nations " have no right to interfere in the government of an indepen- " dent State, it is not difficult to prove that the latter has a right " to oppose such interference. A sovereign has a right to treat " those as enemies who attempt to interfere in his domestic " affairs otherwise than by their good offices."†

Now, it is obvious that a foreign Power intervening in a civil war, however justifiable the intervention, makes itself the ally of one party, and the enemy of the other. This intervention is war with one or the other party. Vattel goes so far as to say, that it is a regular war, in some cases morally justifiable; and stops at that point. But since his time, the increasing desire not to engage in wars which can be avoided, has turned attention to defining more accurately the rights and duties of neutrality. To the question, what circumstances should be held to justify the intervention of a foreign Power in a civil war, another is added, what conduct should a foreign Power pursue, so as not to give just cause of offence either to the original State or to the revolted portion? On the one hand, what act should this foreign Power abstain from doing? On the other, what acts may this foreign Power perform for its own interest, which are not to be considered by either of the contending parties as acts of hostility?

Great misconception often prevails as to the meaning of the term Recognition, the nature of the act, and the consequences

* Vattel, ii., c. 4, s. 56. † Ib. s. 57.

resulting from it to the State recognised. We find this misconception common now; and Sir J. Mackintosh and Mr. Canning complained of it in 1824.

In its primary sense, in International Law, Recognition is the term appropriated to the acknowledgment by a State of the independence of a portion or a province which has separated from it. The State recognising cedes its claim of sovereignty, and confers on the portion or province recognised the legal status of independence. Till that moment, worthless as the claim may be, the one has a claim of sovereignty over the other, which by that act it resigns. Thus Great Britain recognised the independence of the United States in 1783.

But there is a secondary use of the word, as applied to the act by which a foreign Power expresses its opinion, that the portion which has revolted from its parent State has acquired actual independence of that State. The foreign Power has no sovereignty to cede. The recognition, therefore, does not confer independence, but implies a solemn verdict on the part of the Power which recognises, recording the establishment in fact of that independence.

The following passage from Sir J. Mackintosh's speech in 1824, on the recognition of the Spanish American States, explains this distinction clearly:—

"Recognition is a term which is used in two senses so different "from each other as to have nothing very important in common. "The first, which is the true and legitimate use of the word "'recognition,' as a technical term of international law, is that "in which it denotes the explicit acknowledgment of the inde- "pendence of a country by a State which formerly exercised "sovereignty over it. Such recognitions are renunciations of "sovereignty,—surrenders of the power or of the claim to "govern.

"But we, who are as foreign to the Spanish States in America "as we are to Spain herself,—who never had any more author- "ity over them than over her,—have, in this case, no claims to "renounce, no powers to abdicate, no sovereignty to resign, no "legal rights to confer. What we have to do is, therefore, not

" recognition in its first and most strictly proper sense. Our " recognition is virtual. The most conspicuous part of such a " recognition is the act of sending and receiving diplomatic " agents. It implies no guarantee, no alliance, no aid, no appro- " bation of the successful revolt, no intimation of an opinion " concerning the justice or injustice of the means by which it " has been accomplished. These are matters beyond our juris- " diction. It would be an usurpation in us to sit in judgment " upon them. As a State, we can neither condemn nor justify " revolutions which do not affect our safety, and are not amen- " able to our laws. We deal with the authorities of new States " on the same principles and for the same object as with those " of old. We consider them as Governments actually exercising " authority over the people of a country with whom we are " called upon to maintain a regular intercourse by diplomatic " agents for the interests of Great Britain, and for the security " of British subjects."*

In his reply, Mr. Canning puts the same distinction shortly thus :—

" Recognition has clearly two senses, in which it is to be " differently understood. If the colonies say to the mother " country, 'We assert our independence,' and the mother coun- " try answers, 'I admit it,' that is recognition in one sense. If " the colonies say to another State, 'We are independent,' and " that other State replies, 'I allow that you are so,' that is " recognition in another sense of the term. That other State " simply acknowledges the fact, or rather its opinion of the " fact; but she confers nothing, unless, under particular cir- " cumstances, she may be considered as conferring a favour."†

The misconception arises from confounding these two senses. People pass from the one use of the word to the other use. Recognition of independence by a foreign Power is spoken of as if it gave the independence conferred by recognition on the part of the mother country, instead of being spoken of as the acknowledgment of a fact, which must exist to be acknowledged.

* Mackintosh's Works, p. 748.

† Canning's Speeches, v., p. 300.

I. The first of the two cases before us presents an angry correspondence, and a precedent of little value; but, in return, it presents an amusing story. The transactions which ended with the recognition of the United States by France in 1778, were marked throughout by a want of good faith to England. Lewis the Sixteenth, his Ministers, and the French people treated the propriety of the recognition of the United States not as a question of international law, but as a question of the interests of France. Arguments from international law were indeed appealed to, but in support of foregone conclusions, and of a policy adopted without regard to any law. Every fresh diplomatic and even literary discovery on the subject places this in a clearer light. The papers of Beaumarchais have filled up what the letters of Franklin left untold. The appeal to international law is of value to us in tracing the progress of international law, but the main interest of the whole transaction is historical. It was a political intrigue, in which Lewis the Sixteenth, the Comte de Vergennes, and Beaumarchais were the chief actors.

From the beginning, the dispute between England and her American colonies attracted the eager attention of the French Government, and of the French people. When the dispute became revolution, their interest in it deepened. The treaty of 1763, at the end of the seven years war, had always been felt in France to be a humiliation, and the nation hoped that the events in America would lessen the influence of England, and afford an opportunity of repairing their own disgrace. The sympathies of French society displayed themselves even in social habits. "With a frivolity," observes a French historian, "which we mix with our most serious business," whist was banished for a game called Boston. Some, too, saw in the declaration of independence of the 4th of July, 1776, the realisation of the theories of the "Contrat Social," and the opening of a new era. But all hated England.

In 1776, Beaumarchais, at once a secret envoy and the author of "Le Barbier de Seville," a politician and a speculator, presented a memoir to the Government on the subject, which ultimately determined their course of action. The memoir is

curious, for a slight change of names would make the sentences express anticipations aroused among ourselves with regard to Canada, by the present American war. He argued in favour of assisting the Americans, in order to save the French Antilles, and even to preserve peace. If England is victorious she will seize our sugar islands to defray the cost of the war; if she is defeated, she will make the same attempt to repair her losses. If the parliamentary opposition comes into office, and reconciles England with her colonies, both will unite against us. Peace between France and England can be preserved only by preventing peace between England and America; and the only means of accomplishing this is by sending assistance to the Americans sufficient to place their forces on a level with those of England, but no more. He recommended that the Americans should be assisted secretly, and offered to undertake the task.*

Lewis the Sixteenth and the Comte de Vergennes, his Minister for Foreign Affairs, shrank from adopting advice which they foresaw must end in war. They thought that the vexatious exercise of the right of search, alleged to have taken place over French vessels, even in French waters, might afford a just ground for war; but they also thought that the French navy was not in a state to justify the risk. The whole subject was referred to the Council. M. Turgot was at that time Director-General of the Finances, and thus a member of the Council. He wrote a paper, remarkable not only for the thorough examination of the subject in all its branches, but for the views of colonial policy, and the anticipations contained in it. Nothing, he said, can stop the course of things, which will certainly bring about, sooner or later, the absolute independence of the colonies of England; and the result will be a complete revolution in the political and commercial relations of Europe and America. "I firmly believe that all mother countries will be obliged to abandon all empire over their colonies; to leave them complete freedom of trade with all nations, and to be content with sharing this freedom with others, and with being united to their colonies by the bonds of friendship and fraternity." He urged many reasons against an offensive war: among others, that such a war would bring

* Beaumarchais et son Temps, par Loménie, i. 102.

about the reconciliation of the mother country with the colonies by inducing her to yield to their demands. His advice was, to enable the colonists to procure more easily by commercial means the munitions of war and the money needed, without going beyond the bounds of official neutrality, and without giving direct assistance.*

This fear of a reconciliation between England and her colonies, to be cemented by a war with France, was, throughout, the vision present to the French statesmen. At a later period, the American agents made use of this fear for their own purposes.

The advice of Turgot coincided with that of M. de Vergennes, and was followed. Forty thousand pounds were secretly advanced by the French Government to Beaumarchais to establish a commercial house. Beaumarchais received the money on the 5th of June, 1776. The curious letter from M. de Vergennes to the King, of the 2nd of May, 1776, probably refers to this transaction. If not, it proves that an advance was made directly to the Americans within a few days of that to Beaumarchais. The Minister wrote, that he submitted for the King's approval "the warrant authorising him to advance one million francs for the service of the English colonies," and a draft of his answer to Beaumarchais. This answer was not to be written with his own hand, or by any of his secretaries, but by his son, whose writing could not be known, and for whose discretion, though only in his fifteenth year, he could answer. To prevent the transaction being imputed to the Government, he proposed to send for M. Montaudoin, upon the pretext of obtaining some information from him; but in reality to entrust him with the task of transmitting the money to the Americans, and of impressing upon them the precautions to be observed.†

Another forty thousand pounds was advanced by the Spanish Government through the influence of the French Minister; and the energy and enthusiasm of Beaumarchais found the

* Turgot, viii. pp. 496, 502.
† Martens' Nouv. Causes Célèbres, i. p. 380.

rest of the capital. The house traded under the name of "Roderigo Hortalez & Company." Nor was the house of Hortalez & Co. the only firm which received this assistance. The course of business was thus arranged: These firms were allowed to buy stores from the public arsenals. The Americans were to deal with the firms, and were to pay for the supplies by cargoes, for the importation of which every facility was to be afforded. Accordingly, when Mr. Deane, the first agent of the Colonies, applied to the French Government for two hundred guns, he was refused officially, but officiously referred to Beaumarchais, who procured for him not only the guns, but artillery and engineer officers. These events have long been well known, from the correspondence of Franklin: but it was not till the publication of the papers of Beaumarchais that the respective parts of the house of Hortalez, the Minister, and the American envoys at Paris were fully made public. From these papers we gather the following amusing account of the transaction:—The officers embarked with the guns on board the Amphitrite and two other vessels, equipped at Havre by the house of Hortalez. To escape capture by English cruisers, the ostensible destination of the vessels was the French Antilles. But the nature and magnitude of the preparations, and the presence of Franklin at Havre, excited the suspicions of Lord Stormont, the English ambassador. The head of the house of Hortalez himself contributed to the discovery. He had gone to Havre under an assumed name to superintend the preparations. On arriving there he found that one of his own plays was to be acted, and he could not resist the temptation of being present at the rehearsal and giving hints to the actors. The mercantile agent was found to be no less a person than the play-writer, and the play-writer was well known to have been employed as an agent of the French Government. Lord Stormont indignantly remonstrated, and M. de Vergennes laid an embargo on the two vessels, for the Amphitrite had already sailed. Beaumarchais applied for the removal of the embargo. An enigmatical letter from M. de Vergennes followed. The vessels sailed, and, after many adventures, reached Ports-

mouth, in New Hampshire, in 1777. But the Americans appear to have misunderstood the character of the transaction. One of their agents, it is said, misled them by mistaken information. They considered the munitions of war as presents from the French Government, and the demand for payment intended merely to give a mercantile colour to the gift. The remittances were not made by Congress at the times stipulated for by the agents in Paris. In vain Beaumarchais pressed for payment. His biographer has remarked, that his letters might well deceive the Americans. Demands for payment were coupled with high-flown protestations of devotion to their cause. His letters might be those of an urgent creditor, but they might also be the letters of a political agent veiling the complicity of his Government by the assumption of a mercantile character. At length, the Amphitrite brought back a small cargo of indigo and rice. The cargo was consigned to the American agents, who considered it their own, and, as they were in want of money, took possession of it. The house of Hortalez was obliged to threaten legal proceedings to recover the first and small return for an enormous outlay.

Meanwhile, M. de Vergennes advanced another £40,000, and the affairs of Beaumarchais were so prosperous that he had a fleet of no fewer than twelve vessels. But it was long before the Americans believed in the reality of the claims; and when they admitted their reality they disputed their accuracy. In his old age, bankrupt and in exile, from his garret in Hamburg, Beaumarchais begged for payment, in language which this time admitted of no double meaning: "Americans, "I die your creditor. Let me on my death-bed leave my "daughter as a legacy to you; and ask for her dowry your debt "to me. Give alms to your friend, the only reward for his "repeated services. *Date obolum Belisario.*" He died unrewarded. Thirty-six years afterwards, in 1835, his representatives received £32,000 in satisfaction of his claim for £90,000.*

To return to the history of French policy. The events of this period are summed up by Martin, in his History of France:—

* Beaumarchais et son Temps. ii. p. 83.

" It became more and more difficult for the French Govern-
" ment to maintain the equivocal position it had taken up.
" The English incessantly renewed their bitter complaints of
" the presence of agents of the 'Rebels' in France, of the
" admission of American privateers into French ports, and
" of the consignments of munitions of war made in France on
" account of the rebels. The court of Versailles disavowed the
" consignments, and sometimes stopped them, sent away the
" privateers,—for the most part French, with a few American,—
" which when refused entrance at one port entered another,
" declared that it tolerated the agents of Congress only as private
" persons, and complained in turn of the insults to our flag, and
" the vexatious search of our vessels, which the English indulg-
" ed in even on our shores. On the 4th of July, 1777, the
" Minister of Marine gave notice to the Chambers of Commerce
" that he would protect and claim restitution of the vessels
" which the English seized under pretext of their trading with
" America. Fleets were made ready for sea at Toulon and Brest.
" Yet the Minister of Foreign Affairs, in an official reply to the
" Cabinet of St. James's of the 15th of July, still protested
" that France was faithful to her treaty engagements."

This policy was continued till the news arrived of the surrender of Burgoyne at Saratoga. That event increased the fear of a reconciliation, and induced the French Government to adopt a more decided course. The overtures of the American agents were immediately accepted; and on the 6th of February, 1778, a treaty was entered into, by which the independence of the United States was acknowledged. On the same day, an offensive and defensive alliance was signed, to take effect in case of a rupture between France and England. That same evening Lord Stormont, whom Beaumarchais described to Lewis as knowing and reporting everything said even at his council-board, wrote to the Secretary of State, Lord Weymouth, that the treaty was signed. On the 18th of February, he wrote again, that, from the exactest information he could obtain, two treaties had been made "with the rebels," one merely commercial, the other a treaty of alliance. If the latter was made, there was no doubt France was resolved to

support her perfidy by open force. Advantage and dignity might be derived by striking the first blow, by producing the numberless proofs they had of the perfidy of France, and ordering the fleet to avenge it.*

On the 13th of March came the French official communication of their engagements, beginning with the following words:—

"The United States of North America, which are in full "possession of independence, as declared by their Act of the "4th of July, 1776, having proposed to the King to consolidate "the connexions that have begun to be established between the "two nations, the respective Plenipotentiaries have signed a "treaty of amity and commerce."

The concluding paragraph stated that Lewis had taken eventual measures in concert with the United States to protect the lawful freedom of the commerce of his subjects, and to sustain the honour of his flag.

On the 17th, George the Third sent a message to Parliament, announcing that he had withdrawn the English Ambassador from Paris, "in consequence of this offensive communication."

I have quoted the communication to point out that the "full possession of independence" was put forward as the justification of the engagements entered into. But no one was deceived. The communication was insulting: "*assez brusquement remise*," says Martens. The treaties had been made to prevent the reunion of the colonies with the mother country;† and though the letter of Lewis containing this statement was not then published, the fact was well known. All the attendant circumstances proved hostility. The recognition was the open act which closed a series of clandestine intrigues. The communication was felt on all hands to be intended as an insult. It was accepted as an insult.

The two countries were soon engaged in hostilities, though without any actual declaration of war; but it was not till the following year that M. de Vergennes published a manifesto in justification of the policy of France. The tone of the manifesto

* Stanhope's Hist. of England, vi., App. xxiii. † Flassan, vii. p. 179.

was bitter. In this and a subsequent paper the vocabulary of exasperating language at the service of hostile nations was well-nigh exhausted. England was described as a Power whose traditional policy was one of vexation and acts of violence. Her maxim was, her right to be the exclusive mistress of the seas; to this all her efforts were directed. She found the power of France in her way, and she resolved that it must be destroyed or confined within narrow bounds. If every treaty from the time of Cromwell were examined, there would be found in all evident and revolting traces of the haughty, envious, and encroaching policy of the Court of London. The manifesto contrasted such conduct with the pacific and loyal behaviour of France, and sought to throw on England the responsibility of having begun the war. It was wholly an appeal to facts. The transactions just related form, certainly, a curious commentary on the paper.

An answer was written by Gibbon. Like the manifesto of M. de Vergennes, it dealt chiefly, though not so exclusively, with facts. The justification of England was reduced to the proof of two propositions:—

1. That, during a period of profound peace, France had formed relations, at first secret, and afterwards open and avowed, with the revolted colonies of America.

2. That, according to the best recognised maxims of the Law of Nations, and actually subsisting treaties, these relations might be regarded as violations of peace, and that the avowal of these relations was equivalent to a declaration of war.

We need not follow the reasoning. One remark is enough. Such a mode of stating the case avoids any discussion on the abstract principles of recognition. The answer was written upon the facts contained in Lord Stormont's despatches. Like the manifesto of M. de Vergennes it was bitter in tone. France was represented as the perpetual enemy of the public repose. She did not blush to lower her dignity by forming secret relations with rebellious subjects. Perfidy and dissimulation reigned in her counsels. The most insidious policy was concealed under the most seductive professions,—professions which served to give the lie to her declarations. She could find no excuse for

her conduct, except by an unfounded and improbable assumption of intentions on the part of England. The Court of Versailles stated, with an air of frankness and simplicity, that it had found the colonies independent. The most important towns were in the occupation of the English army. The English flag ruled over the American seas. The Court of Versailles had alone contributed, by clandestine assistance, to fan the flame of revolt, and, at the rumour of a reconciliation, concluded the treaty to throw fuel on the flames. Under these circumstances it would be an insult to reason and truth to deny that the declaration of the 13th of March of the treaty and the eventual measures was a declaration of war.

The answer called forth "Observations" in reply. In the midst of irrelevant abuse, and statements which have lost their interest, because we know them to have been untrue, we shall find the principles stated upon which the policy of France claimed to be founded. Some of these principles will command universal acceptance. Freedom of trade between the French and Americans was thus defended:—

"In time of war, commerce may be divided into two "branches: the first comprises merchandise not prohibited; "the object of the second is merchandise known under the "name of contraband of war. Nations who wish to be "neutral, continue perfectly free to carry on the first "kind of commerce with the belligerent parties: but the "second is prohibited; the merchandise may be intercepted "and confiscated, in conformity with the rules prescribed "by usage or treaty. On referring both to one and the "other, it will be found, not that the commerce in objects "called contraband is a breach of neutrality, but that the "individuals who engage in it simply render themselves liable "to the penalty of confiscation."

The statement is clear and accurate, but it was not to the point. The indigo and rice brought home by the Amphitrite were not contraband of war. The guns and officers taken out in the Amphitrite were contraband of war. The putting on board a contraband cargo by Beaumarchais, simply rendered his vessel liable to confiscation. Furnishing a contraband cargo

out of the public stores, by the aid of public money advanced by the Minister under a warrant from the King, was a breach of neutrality.

The Observations further state, that the act of the King of France in recognising and forming treaty relations with the Americans, was based on two incontestable truths: first, that, at the date of the 6th of February, 1778, the Americans were in public possession of their independence; and, secondly, that the king had the right of regarding this independence as existing, without being obliged to examine its legality. Both these points are argued at length and with ability. Upon the second, it is said:—

"Whether the United States had or had not the right of "abjuring the sovereignty of England; whether their possession "of independence be legitimate or not, are questions which it "is not for France to discuss. The King is not the judge of "the domestic quarrels of England. Neither the law of "nations, nor treaties, nor morality, nor policy, imposed on "him the obligation of being the guardian of the loyalty which "English subjects may owe to their Sovereign. It is sufficient for the justification of His Majesty that the colonies, "which form a considerable nation, as well by the number of "their inhabitants as by the extent of their dominions, have "established their independence not only by a solemn act, but "also in fact, and have maintained it against the efforts of the "Mother Country. Such was, in effect, the position of the "United States when the King began to negotiate with them. "His Majesty was perfectly at liberty to regard them either "as independent, or as subjects of Great Britain. His Majesty "has chosen the former course, because his safety, the interest "of his nation, his invariable policy, and, above all, the secret "projects of the Court of London, imposed on him this "obligation."

The Paper might have stopped there, but it goes on to lay down this principle:—

"That the law of nations, the policy and example even of "England, authorised the King to regard the Americans as "independent in fact, from the epoch of the 4th of July, 1776, "and *a fortiori* from that of the 6th of February, 1778."

This assertion might perhaps be made as to the latter date. The French Government might be justified in saying that the surrender at Saratoga rendered the attempt to conquer the Americans hopeless. But, at the earlier date, they were not independent in fact. The proposition, that the King of France had the right of treating the Americans as independent after the publication of their manifesto of the 4th of July, 1776, must be a proposition of law, resting on the principle that in such cases of dispute between a revolted portion and the parent State, foreign Powers are not bound to look beyond the declaration of independence. This appears to be the view of Hautefeuille: "Neutral foreigners," he says, "may make with the two parties "such treaties of commerce, of navigation, of recognition, as "they judge convenient, provided they abstain from taking "any part in hostilities: provided they do not furnish assist-"ance in men or munitions of war; provided, in a word, they "discharge the duties of neutrality."* But this view is opposed to the great current of authority. He stands alone, I believe, in his opinion. Enough, however, has been said to show, that, tried even by this standard, the policy of France was one of intervention from the first. An English writer may be open to the suspicion of looking, even at past history, from an English point of view. It is safer to quote a well-known authority in diplomatic literature. This is the judgment of Martens upon the whole transaction:—

"The Court of Versailles displayed a profound policy and "uncommon skill in the execution of its plan of wishing to "serve as guide to the American colonists, and of conducting "them openly to independence. It may even be said that in "no other affair, however important, and at no other time, has "the French Government given equal proof of sagacity and "constancy. It worked underground as long as it was "perilous to discover its agency; and it marched with a bold "front from the moment that the success of the colonists "allowed it to see in them sure allies. It entered into the "struggle when its armies, and above all its fleets, were ready;

* Droits des Nations Neutres, i. 452.

" when all nations pronounced in its favour; when, in a word, " everything promised it victory."*

The French have always looked with pride on their share in the establishment of the independence of the United States. They call the war of 1778 the American war. In a paper lately written in the *Revue des Deux Mondes*, containing an account of a campaign with the army of the Potomac, by a French officer, the writer traces with natural pride the lines of Rochambeau, in front of York Town:—"The combined operations of Washington and Rochambeau," he says, "were consummated by the capitulation which insured the independence of the United States. On the ramparts of York Town the blood of French soldiers sealed an alliance to which the United States have owed their prosperity and greatness."†

The more true the boast, the less valuable is the precedent in international law. This second surrender—the capitulation of Lord Cornwallis—took place on the 19th of October, 1781. The provisional treaty of peace between England and the United States, by which the independence of the latter was first acknowledged by the former, was made on the 30th of November in the following year. But this capitulation really ended the struggle. The English troops still held the positions of New York, Charleston, and Savannah; and more fighting took place, but no reinforcements were sent out, no new effort was made. After this date, England could not, I think, have complained of the recognition of the United States by neutral nations. The dominion over the country had passed out of her hands, though she retained some outposts. But the recognition of the independence of the United States by France in 1778, was followed by three years of war, in which France herself took a considerable part, before the independence was really established.

II. The second of the two cases which make up our chapter of history is separated from the first by nearly half a century. It differs from the former in almost every important particular. In this case, the State Papers are excellent, the precedent

* Martens' Nouv. C. C. i. p. 498. † Rev. des deux Mondes, Oct. 14, 1862.

is valuable, and the historical portion is unattractive and tedious. The negotiations relative to the Recognition of the States of Spanish America both by the United States in 1822, and by England in 1825, were conducted with a careful regard for facts, and also for the feelings of Spain. Hence this case forms the real precedent for the conduct of neutral nations. In this consists its chief, almost its only interest. Forty years ago real enthusiasm was felt in the historical events, but in the present day the very names of the battles which decided the fate of the Continent are unknown to more than half of the educated world. It is not too much to say, now that the anticipations, entertained at the time of the revolution, of the future prosperity of the Spanish American States, have been disappointed, that the historical interest of the case is completely merged in its diplomatic interest. I shall therefore mention the events, with their dates, only so far as they are necessary as an introduction to the diplomatic papers.

In the beginning of the year 1810, the Spanish possessions in the Americas reached from 37° 48′ north latitude, to 41° 43′ south latitude, along a line of nearly 6,000 miles. The most northerly point was San Francisco; the most southerly, Fort Maultin, at the lower extremity of Chili. These possessions were longer than Africa; and at their greatest width wider than Russia. They were divided into nine governments: Mexico, Havanna (which included the Floridas), Guatemala, Porto Rico, Caraccas, New Granada, Peru, Chili, and Buenos Ayres.* In that year the revolutionary movement began, which ended in the independence of Mexico and of the South American colonies. The ultimate causes of the revolution were discontent with the Spanish system of colonial government; unwillingness to be dragged along with the fortunes of the mother country during the period of Spanish degradation in the French wars; and a growing sense that the wide extent and increasing trade of the colonies entitled them to independence. The master spirit of the revolution was Bolivar; and in the minds of English readers with his name is associated that of Lord

* Humboldt's Essai Politique, Vol. i. liv. 1, chap. 1, p. 4.

Cochrane, whose narrative of his services in the liberation of Chili and Peru has been recently published.

In the course of 1810, revolutions broke out in Caraccas, Chili, Buenos Ayres, and New Granada.* At first, and for different periods, in different provinces, the authority of Ferdinand VII. was acknowledged; but not the authority of the self-constituted Juntas, or of the Regency of Cadiz, which professed to act in the king's name. But from the outset, notwithstanding these professions, there was a party which aimed at separation. The earlier stages of the revolution were attended with doubtful success, and the contest really depended upon the comparative strength in each province of the loyalists and the independents, as the parties in favour of retaining or of dissolving the connexion with the mother country were respectively called. Spain was too feeble and too much engaged at home to interfere till late, or even then with a force sufficient for the subjugation of her colonies.

Caraccas united with the neighbouring provinces to form the Confederation of Venezuela. A declaration of independence was put forth on the 5th of July 1811; but though the Spanish authority was at first overthrown, it recovered its hold, and for a time appeared firmly re-established. The independents then joined their fortunes to those of New Granada, where a revolution had also taken place. The two provinces united on the 19th of December, 1819, to form the Republic of Columbia. Bolivar was made President. Under his auspices, the independents were again successful, and an armistice with the Spaniards followed, in hopes that a settlement might be made and bloodshed spared. But the armistice expired without a settlement, and hostilities began again. On the 24th of June, 1821, Bolivar completely defeated the Spanish army at Carabobo.† From this battle the independence of Columbia dates. The remnants of the Spanish forces retreated to Puerto Cabello, where they remained powerless and besieged. It was, however, two years before they actually capitulated. Meanwhile the sovereignty of the new republic was undisputed.

* Annual Register, 1810, pp. 223—231.
† Annual Register, 1811, p. 261.

In Chili, a declaration of independence was published in 1811, but the Spanish authority was not completely overthrown till 1818. In that year the royalist army was annihilated at the battle of Maypu. Out of six thousand men who went into battle, two thousand were killed and three thousand five hundred were taken prisoners.

Buenos Ayres, though involved in the revolutionary movement of 1810, did not separate from the mother country so early as the provinces just mentioned. In 1816, the provinces on the river La Plata proclaimed their independence. The Spanish troops maintained a contest till July, 1821.

In Mexico, a declaration of independence was published in October, 1813, by a national congress. The Spanish viceroy, however, held his ground. For some years the revolution was little more than a guerilla war, and the cause of the insurgents fell so low, that by 1819 the country was tranquil, and the rebellion considered at an end. But in that year it burst out with fresh force under a leader named Iturbide, whose authority was acknowledged throughout the country, except in the city of Mexico. Iturbide was on his march to the siege of that city when the Spanish viceroy concluded a treaty with him, called the Treaty of Cordova, by which the independence of Mexico was acknowledged, on the 24th of August, 1821.* This treaty was subsequently declared "null and void" by the Cortes of Madrid, but the Spanish rule was in reality at an end.

In the same year, on the 15th of September, Guatemala declared its independence.† Afterwards, it was incorporated with Mexico. In 1823 it separated itself from Mexico, and the five states of Guatemala eventually formed a confederation—the States of Central America.

Peru will complete the list. Peru did not take part in the revolutionary war at the outbreak; the neighbouring States of Chili and Buenos Ayres found it necessary to carry the war into the country, and expel the Spaniards in defence of their own independence. Accordingly, in February, 1821, a combined army from Chili and Buenos Ayres laid siege to Lima, which was

* State Papers, ix. 431. † State Papers, ix. 854.

evacuated by the Spanish general after a short resistance. The fleet under the command of Lord Cochrane co-operated with the land forces, and captured the port of Callao. The independence of Peru was declared on the 28th of July, 1821; but the new Government was feeble, and its measures were unsuccessful. The Spanish adherents rapidly regained ground; Lima and Callao fell again into their hands. At this juncture, in September, 1823, Bolivar arrived from Columbia to join the independents, and was made dictator. His name and his measures infused new strength. Before the end of the next year, on the 9th of December, the Spanish viceroy was defeated at the battle of Ayacucho. The victory was complete; the viceroy was taken prisoner, and his army was dispersed. Callao now alone held out for the royal cause; and its defence was the last and most chivalrous event of the war. Rodil, the governor, refused to be included in the capitulation entered into by the Spanish general at Ayacucho, on the ground that the governor of Callao held the fortress directly under the King of Spain. He gave shelter to all the royalist refugees, and prepared to defend the place to the last. They were besieged by sea and by land; they were reduced to live on the flesh of horses and dogs. Famine and fever thinned their ranks; there were no more dogs and horses to be eaten. It is said that out of four thousand, only two hundred survived. Then, after a siege of more than a year, Rodil capitulated in January, 1826.

The revolution immediately had the effect of giving a great impulse to the industry of the continent, and of increasing the trade both with the United States and England. In consequence, in 1818, Buenos Ayres requested the United States to receive consuls, alleging that the subjects of Buenos Ayres were placed in a position of inequality, as compared with Spanish subjects, since the latter had consuls officially to protect their interests before the judicial tribunals, while the former had not. The request was supported by the argument, that a consul from the United States was residing in Buenos Ayres; and that, therefore, a consul from Buenos Ayres might be received by the United States. The request was refused, as prematurely involv-

ing recognition.* On the second point, Mr. Adams, the Foreign Minister, said, that the continued residence of a consul at Buenos Ayres, appointed in fact before the revolution, "implied no recognition of any particular Government."

His remarks on the former point are worth quoting at length, as exemplifying an inequality between the revolted province and the mother country, as regards a foreign Power, resulting from their respective characters, and not from a want of neutrality on the part of the foreign Power :—

"The equality of rights to which the two parties to a civil "war are entitled, in their relations with neutral Powers, does "not extend to the rights enjoyed by one of them, by virtue of "treaty stipulations contracted before the war; neither can it "extend to the rights, the enjoyment of which essentially "depends upon the issue of the war."

"We receive consuls from Spain by Treaty."

"Consuls are indeed received by the Government of the "United States from acknowledged Sovereign Powers, with "whom they have no Treaty. But the exequatur for a Consul-"General, can obviously not be granted without recognising the "authority, from whom his appointment proceeds, as Sovereign "The Consul, says Vattel, (Book 2, c. 2, ss. 3, 4), is not a "Public Minister; but, as he is charged with a commission "from his Sovereign, and received in that quality by him "where he resides, he should enjoy, to a certain extent, the pro-"tection of the Law of Nations."

"If, from this state of things, the inhabitants of Buenos "Ayres cannot enjoy the advantages of being officially repre-"sented before the courts of the United States by a consul, "while the subjects of Spain are entitled to that privilege, it "is an inequality resulting from the nature of the contest in "which they are engaged, and not from any denial of their "rights as parties to a civil war. The recognition of them as "such, and the consequent admission of their vessels into the "ports of the United States, operate with an inequality against "the other party to the civil war, and in their favour."*

* State Papers, vii. 1062.

At the same time Mr. Adams unofficially communicated and transacted business with the agent whom he refused to receive as a Consul-General.

But the events of the next three years produced a great change. By the end of 1821, as we have seen, Spain had very little authority left to her within any one of her ancient provinces. Not unnaturally, the United States were the first to recognise the independence of the new States thus formed on their own Continent.

In 1822 the views of the Government of the United States were explained in a message of the President, Mr. Monroe, to Congress, of the 8th of March. It is a State Paper deserving the highest praise:

"The revolutionary movement in the Spanish provinces in "this hemisphere attracted the attention, and excited the sym- "pathy of our fellow-citizens from its commencement. This "feeling was natural and honourable to them, from causes which "need not be communicated to you. It has been gratifying to "all to see the general acquiescence which has been manifested "in the policy which the constituted authorities have deemed "it proper to pursue in regard to this contest. As soon as the "movement assumed such a steady and consistent form, as to "make the success of the provinces probable, the rights to which "they were entitled by the law of nations, as equal parties to a "civil war, were extended to them. Each party was permitted "to enter our ports with its public and private ships, and to "take from them every article which was the subject of com- "merce with other nations. Our citizens, also, have carried on "commerce with both parties, and the Government has protected "it with each in articles not contraband of war. Through the "whole of this contest the United States have remained neutral, "and have fulfilled with the utmost impartiality all the obliga- "tions incident to that character.

"This contest has now reached such a stage, and been attended "with such decisive success on the part of the provinces, that "it merits the most profound consideration, whether their right "to the rank of independent nations, with all the advantages "incident to it, in their intercourse with the United States, is

" not complete. Buenos Ayres assumed that rank by a formal
" declaration in 1816, and has enjoyed it since 1810, free from
" invasion by the parent country. The provinces composing the
" Republic of Columbia, after having separately declared their
" independence, were united by a fundamental law of the 17th
" of December, 1819. A strong Spanish force occupied at that
" time certain parts of the territory within their limits, and
" waged a destructive war. That force has been repeatedly de-
" feated, and the whole of it either made prisoners or destroyed,
" or expelled from the country, with the exception of an incon-
" siderable portion only, which is blockaded in two fortresses.
" The provinces on the Pacific have likewise been very success-
" ful. Chili declared independence in 1818, and has since en-
" joyed it undisturbed; and of late, by the assistance of Chili
" and Buenos Ayres, the revolution has extended to Peru. Of
" the movement in Mexico, our information is less authentic;
" but it is, nevertheless, distinctly understood, that the new
" Government has declared its independence, and that there
" is now no opposition to it there, nor a force to make
" any. For the last three years, the Government of Spain
" has not sent a single corps of troops to any part of
" that country; nor is there any reason to believe it will
" send any in future. Thus, it is manifest, that all those
" provinces are not only in the full enjoyment of their indepen-
" dence, but, considering the state of the war and other circum-
" stances, that there is not the most remote prospect of their
" being deprived of it.

" When the result of such a contest is manifestly settled, the
" new Governments have a claim to recognition by other Powers,
" which ought not to be resisted. Civil wars too often excite
" feelings which the parties cannot control. The opinion enter-
" tained by other Powers as to the result, may assuage those
" feelings, and promote an accommodation between them, useful
" and honourable to both. The delay which has been observed
" in making a decision on this important subject, will, it is pre-
" sumed, have afforded an unequivocal proof to Spain, as it must
" have done to other Powers, of the high respect entertained by

" the United States for her rights, and of their determination " not to interfere with them. The provinces belonging to this " hemisphere are our neighbours, and have, successively, as each " portion of the country acquired its independence, pressed their " recognition by an appeal to facts not to be contested, and which " they thought gave them a just title to it. To motives of in- " terest, this Government has invariably disclaimed all preten- " sion, being resolved to take no part in the controversy, or other " measure in regard to it, which should not merit the sanction " of the civilized world. To other claims, a just sensibility has " been always felt, and frankly acknowledged, but they in them- " selves could never become an adequate cause of action. It " was incumbent on this Government to look to every important " fact and circumstance on which a sound opinion could be " formed; which has been done. When we regard, then, the " great length of time which this war has been prosecuted, the " complete success which has attended it in favour of the pro- " vinces, the present condition of the parties, and the utter " inability of Spain to produce any change in it, we are com- " pelled to conclude that its fate is settled, and that the pro- " vinces which have declared their independence, and are in the " enjoyment of it, ought to be recognised.

" In proposing this measure, it is not contemplated to change " thereby, in the slightest manner, our friendly relations with " either of the parties, but to observe, in all respects, as hereto- " fore, should the war be continued, the most perfect neutrality " between them. Of this friendly disposition an assurance will " be given to the Government of Spain, to whom it is presumed " it will be, as it ought to be, satisfactory. The measure is pro- " posed, under a thorough conviction that it is in strict accord " with the Law of Nations; that it is just and right as to the " parties; and that the United States owe it to their station and " character in the world, as well as to their essential interests, to " adopt it."*

The Committee of Foreign Affairs, to which this message was referred, reported upon it in a Paper of the 19th of March, 1822.

* State Papers, ix. 366; Martens' Nouveau Rec. vi. 148.

The Paper begins with a finding of the fact of independence. After a recital of the events I have mentioned, up to the date of the Paper, it is said :—

" Such are the facts which have occupied the attention of " your Committee, and which, in their opinion, irresistibly prove " that the nations of Mexico, Columbia, Buenos Ayres, Peru, and " Chili, in Spanish America, are in fact independent."

The right and expediency of recognising the independence they had " effectually achieved " are next examined.

" The political right of this nation to acknowledge their " independence, without offending others, does not depend on its " justice, but on its actual establishment. To justify such a " recognition by us, it is necessary only to show, as is already " sufficiently shown, that the people of Spanish America are " within their respective limits exclusively sovereign, and thus " in fact independent. With them, as with every other Govern- " ment possessing and exercising the power of making war, the " United States, in common with all nations, have the right of " concerting the terms of mutual peace and intercourse."

The expediency of recognition is treated of as regards both Spain and the other nations of Europe. The reasoning is temperate and conciliatory. It is enough to quote one sentence which refers to the other nations of Europe :—

" It is not unreasonable to suppose that those Governments " have, like this, waited only for the evidence of facts, which " might not only suffice to justify them, under the laws and " usages of nations, but to satisfy Spain herself, that nothing " has been prematurely done, or which could justly offend her " feelings, or be considered as inconsistent with her rights." *

The message of the President called forth a remonstrance from the Spanish minister at Washington ; but his argument is founded on the absence in the provinces of Governments entitled to recognition, rather than on any actual hold still retained by Spain. On this latter point all he alleged is contained in these sentences :—

" Peru, conquered by a rebel army, has near the gates of the

* Martens' Nouveau Rec. vi. 152.

" capital another Spanish army, aided by part of the inhabi-
" tants.

" On the coast of Firma the Spanish banners wave.

" In Mexico there is no Government, and the result of the " questions which the chiefs commanding there have put to " Spain is not known."*

Peru was the strongest instance; for these sentences were written at a time when the independent Government appeared unstable, after its first successes in 1821, and before its final success at Ayacucho.

The independence of Mexico had been settled, as we have seen, by the Treaty of Cordova.

The waving banners were those of a small naval force at Puerto Cabello, which attempted, without much success, to harass the coasts of Columbia.

Mr. Adams declined to discuss the detail of facts upon which the Spanish Government (he said) appeared to have information materially different from that which was of public notoriety; and gave to this remonstrance the following unanswerable reply :—

" In the conflicts which have attended these revolutions, the " United States have carefully abstained from taking any part " respecting the right of the nations concerned in them to main- " tain, or new organize, their own political constitutions, by " observing, wherever it was a contest by arms, the most impar- " tial neutrality. But the civil war, in which Spain was for some " years involved with the inhabitants of her colonies in America, " has, in substance, ceased to exist. Treaties, equivalent to an " acknowledgment of independence, have been concluded by the " commanders and viceroys of Spain herself, with the Republic " of Columbia, with Mexico, and with Peru; while, in the pro- " vinces of La Plata and in Chili, no Spanish force has for " several years existed, to dispute the independence which the " inhabitants of those countries had declared.

" Under these circumstances, the Government of the United " States, far from consulting the dictates of a policy question-

* State Papers, ix. p. 752.

" able in its morality, has yielded to an obligation of duty of " the highest order, by recognizing as independent States, nations " which, after deliberately asserting their right to that character, " had maintained and established it, against all the resistance " which had been or could be brought to oppose it. This recog- " nition is neither intended to invalidate any right of Spain, " nor to affect the employment of any means which she may " yet be disposed or enabled to use, with the view of re-uniting " those provinces to the rest of her dominions. It is the mere " acknowledgment of existing facts, with the view to the regular " establishment with the nations newly formed, of those relations, " political and commercial, which it is the moral obligation of " civilized and Christian nations to entertain reciprocally with " one another."*

There had naturally been a strong sympathy in the United States with the revolution. In a despatch of the 10th of May, 1825, containing a sketch of the policy of the United States throughout the war, Mr. Clay writes :—

" The United States have been inactive and neutral spectators " of the passing scenes. Their frankness forbids, however, that " they should say that they have beheld those scenes with feel- " ings of indifference. They have, on the contrary, anxiously " desired that other parts of this continent should acquire and " enjoy that independence, with which, by their valour and the " patriotism of the founders of their liberty, they have been, " under the smiles of Heaven, so greatly blessed." †

A little later Mr. Adams claimed that the United States had taken the lead in the recognition of South American independence, and given both to Europe and America the benefit of their example.‡ But however strong may have been the "sympathetic feeling," the conduct of the United States throughout was scrupulous.

The conduct of England was still more scrupulous. The independence of the South American republics was not recognised till 1825. Before that, the following negotiations took place :—

* Martens' N. R. vi. 152. † State Papers, ix. 755. ‡ Ib. xiii. 465, 478.

In 1810, the King's single mediation was asked and granted to Spain, to effect a reconciliation.

In 1812, the mediation of England was offered to Spain, without assuming the independence of the Provinces as the basis of mediation.

In 1815, Spain asked the mediation of England, but refused to state the terms on which she was willing to agree.

In 1818, the question of an arrangement between Spain and her American Colonies was discussed by the Great Powers at Aix-la-Chapelle, without independence being assumed as the basis. The opinion of the Powers was communicated to Spain, but she observed silence on the subject.

In May, 1822, Spain announced to England that she had measures in contemplation on a new basis, without however describing the basis. In answer, advice was given to hasten the negotiations, as the course of events would not admit of much longer delay.

In the following November, the English Minister at Madrid received an intimation that the Cortes meditated opening negotiations with the Colonies "on the basis of colonial independence." The negotiations were opened and carried through with Buenos Ayres, though subsequently disowned by the Spanish Government.

The first suggestion, therefore, of a negotiation on the basis of independence, came from Spain. After this communication, England expressed her opinion as to the hopelessness of negotiating on any other basis. This opinion was stated, in the first instance, confidentially to Spain, and afterwards, in October, 1823, it was mentioned by Mr. Canning, in a conference with Prince Polignac, the French ambassador in London, and communicated by the latter to Spain and other Powers. It was repeated in a despatch from Mr. Canning to the English Minister at Lisbon, in January, 1824.* The same despatch contains the following passage:—

" But it appears manifest to the British Government, that, if

* State Papers, xi. p. 58.

" so large a portion of the globe should remain much longer " without any recognised political existence, or any definite poli- " tical connexion with the established Governments of Europe, " the consequences of such a state of things must be at once " most embarrassing to those Governments, and most injurious " to the interests of all European nations.

" For these reasons, and not from mere views of selfish " policy, the British Government is decidedly of opinion, that " the recognition of such of the new States as have established " *de facto* their separate political existence, cannot be much " longer delayed.

" The British Government have no desire to anticipate Spain " in that recognition. On the contrary, it is on every account " their wish that His Catholic Majesty should have the grace " and the advantage of leading the way in that recognition, " among the Powers of Europe. But the Court of Madrid " must be aware, that the discretion of his Majesty in this re- " spect cannot be indefinitely bound up by that of His Catholic " Majesty; and that, even before many months elapse, the " desire now sincerely felt by the British Government, to leave " this precedency to Spain, may be overborne by considerations " of a more comprehensive nature—considerations regarding not " only the essential interests of His Majesty's subjects, but the " relations of the old world with the new."

These negotiations are detailed in a Note written by Mr. Canning, in 1825.* They extended over a period of fourteen years, and included not only offers on the part of England, but more than one request for mediation on the part of Spain. One point was made prominent in them: the desire of England not to precipitate recognition so long as there was any reasonable chance of an accommodation with the mother country, by which the recognition might come first from Spain.

Meanwhile, English commerce required, not only negotiation, but action.

In 1822, an Act was passed, authorising the importation of goods, "the growth, production, or manufacture of any country

* State Papers, xii. p. 909.

or place in America, being or having been a part of the dominions of the King of Spain," in ships of the build of the country, as well as in British ships: or, if the country or place should, before or at the time of importation, happen to be under the dominion of the King of Spain, or, if any doubt exist thereon, then in Spanish ships.* Without this permission, under the old Navigation Laws, the goods could have been imported only in British or Spanish ships.

In the following year consuls were sent to the several provinces of Spanish America, as such appointments were absolutely necessary for the protection of English trade in those countries. The measure had been "long deferred out of delicacy for Spain."

On the 15th of June, 1824, Sir J. Mackintosh presented a petition from the merchants of London to the House of Commons, praying for "the immediate recognition of the independence of such of the States of South America as have, de facto, established the same."† His speech on the occasion, and Mr. Canning's reply, are always referred to in explanation of the principles and practice of Recognition. This must be my excuse for quoting from them again. The principles will be best understood by seeing their application discussed.

I quote from Sir J. Mackintosh :—

"It is said, that we are called upon only to acknowledge the "fact of independence, and, before we make the acknowledgment, "we ought to have evidence of the fact. To this single point "the discussion is now confined. The fact of independence is "now the sole object of consideration. If there be no independence, we cannot acknowledge it; if there be, we must.

"To understand the matter rightly, we must consider separately — what are often confounded — the two questions: "Whether there is a contest with Spain still pending? And, "whether internal tranquillity be securely established? As "to the first, we must mean such a contest as exhibits some "equality of force, and of which, if the combatants were left to "themselves, the issue would be in some degree doubtful. It

* 3 Geo. 4, c. 43, ss. 3, 4. † See Petition, Canning's Speeches, v. p. 291.

" never can be understood so as to include a bare chance, that " Spain might recover her ancient dominions at some distant " and absolutely uncertain period."

The question of a contest was soon disposed of.

" What is the Spanish strength? A single castle in Mexico, " an island on the coast of Chili, and a small army in Upper " Peru! Is this a contest approaching to equality? Is it suffi- " cient to render the independence of such a country doubtful? " Does it deserve the name of a contest? "

On the second question, he said:—

" I shall be reminded of the second condition (as applicable to " Mexico and Peru)—the necessity of a stable Government and " internal tranquillity. Independence and good Government are, " unfortunately, very different things. Most countries have " enjoyed the former; not above two or three, since the beginning " of history, have had any pretensions to the latter. Still, many " grossly misgoverned countries have performed the common " duties of justice and goodwill to their neighbours. I do not " say so well as more wisely ordered commonwealths, but still " tolerably, and always much better than if they had not been " controlled by the influence of opinion acting through a regular " intercourse with other nations." *

Mr. Canning replied. He confined himself as much as possible to a simple statement of facts. The course laid down by ministers was one of strict neutrality. They had first allowed the colonists to assume an equal belligerent rank with the parent country, and, in so doing, *pro tanto* raised them in the scale of nations. In 1822, the commerce then existing between England and the colonies of Spain had led to another *de facto* recognition of their separate political existence; their commercial flag was recognised, and admitted to the same advantages as the flags of independent states in unity with England. The recognition of the independence of the colonies had been delayed. This was the reasonable course, even if the interests of the colonies were exclusively looked at. It must be an object of higher importance to them that the recognition by England should be delayed, in the hope

* Mackintosh's Works, pp. 759, 760, 762.

of bringing with it a similar concession from Spain, rather than that the recognition by England should be so precipitate as to postpone, if not prevent, recognition by the mother country, and added that the obligation of waiting for Spain was at an end.*

Accordingly, treaties were made with Rio de la Plata and Columbia in the Spring of 1825; and in the following year a Chargé'd'affaires was sent to Mexico. The appointments made in Chili and Peru were consular appointments.

One more quotation from a Note of Mr. Canning, of the 25th of March, 1825, will complete the account of this transaction. The Spanish Government had alleged, that the course adopted was a violation of International Law. This was the answer given :—

" Has it ever been admitted as an axiom, or ever been ob-
" served by any nation or Government as a practical maxim,
" that no circumstances, and no time, should entitle a *de facto*
" Government to recognition?—or should entitle third Powers,
" who may have a deep interest in defining and establishing
" their relations with a *de facto* Government, to do so?

" Such a proceeding on the part of third Powers, undoubt-
" edly, does not decide the question of right against the mother
" country.

" The Netherlands had thrown off the supremacy of Spain
" long before the end of the sixteenth century; but that supre-
" macy was not formally renounced by Spain till the treaty of
" Westphalia in 1648. Portugal declared, in 1640, her indepen-
" dence of the Spanish monarchy; but it was not till 1668 that
" Spain, by treaty, acknowledged that independence.

" During each of these intervals, the abstract rights of Spain
" may be said to have remained unextinguished. But third
" Powers did not, in either of these instances, wait the slow con-
" viction of Spain, before they thought themselves warranted
" to establish direct relations, and even to contract intimate
" alliances with the Republic of the United Netherlands, as
" well as with the new monarchy of the House of Braganza.

" The separation of the Spanish colonies from Spain has been

* Canning's Speeches, v. p. 300.

" neither our work nor our wish. Events, in which the British " Government had no participation, decided that separation,—a " separation which, we are still of opinion, might have been " averted, if our counsels had been listened to in time. But, out " of that separation grew a state of things, to which it was the " duty of the British Government (in proportion as it became the " plain and legitimate interest of the nation whose welfare is " committed to its charge,) to conform its measures, as well as its " language, not hastily and precipitately, but with due deliberation and circumspection.

" To continue to call that a possession of Spain, in which all " Spanish occupation and power had been actually extinguished " and effaced, could render no practical service to the mother " country; but it would have risked the peace of the world. For " all political communities are responsible to other political communities for their conduct; that is, they are bound to perform " the ordinary international duties, and to afford redress for " any violation of the rights of others by their citizens and " subjects.

" Now, either the mother country must have continued " responsible for acts, over which it could no longer exercise the " shadow of a control, or the inhabitants of those countries, " whose independent political existence was, in fact, established, " but to whom the acknowledgment of that independence was " denied, must have been placed in a situation, in which they " were wholly irresponsible for all their actions, or were to be " visited, for such of those actions as might furnish ground of " complaint to other nations, with the punishment due to pirates " and outlaws.

" If the former of these alternatives, — the total irresponsibility of unrecognised States,—be too absurd to be maintained;—and if the latter,—the treatment of their inhabitants " as pirates and outlaws,—be too monstrous to be applied, for an " indefinite length of time, to a large portion of the habitable " globe, no other choice remained for Great Britain, or for any " country having intercourse with the Spanish American Provinces, but to recognise, in due time, their political existence

" as States, and thus to bring them within the pale of those rights " and duties which civilised nations are bound mutually to " respect, and are entitled reciprocally to claim from each " other."*

This is the great case which contains all the international law on the subject of Recognition, and to which appeal is always made. The United States contributed no less than England to fix the principles of the law. England has uniformly declared her adherence to these principles. In 1849, during the revolution in Hungary, the United States certainly deviated from these principles, by investing an agent in Europe with power to declare their willingness to recognise the new State, in the event of its ability to sustain itself.† This policy was not marked with the caution observed by previous statesmen, and justly gave great offence to Austria. It was proved by the result of the revolution to have been a false move. But false move or not, it must be regarded as an exceptional act. The precedent of 1822 contains the rules of the national policy. The following passage from the message of President Jackson, of the 21st of December, 1836, places this beyond a doubt.

" The acknowledgment of a new State as independent, and " entitled to a place in the family of nations, is, at all times, an " act of great delicacy and responsibility; but more especially so " when such State has forcibly separated itself from another, of " which it had formed an integral part, and which still claims " dominion over it. A premature recognition under these circum- " stances, if not looked upon as a justifiable cause of war, is " always liable to be regarded as a proof of an unfriendly spirit to " one of the contending parties. All questions relative to the " government of foreign nations, whether of the old or new world, " have been treated by the United States as questions of fact " only; and our predecessors have carefully abstained from decid- " ing upon them until the clearest evidence was in their possession, " to enable them not only to decide correctly, but to shield their " decisions from every unworthy imputation. In all the contests " that have arisen out of the revolutions of France, out of the

* State Papers, xii. 912.

† Wheaton's Elements, p. 35, Note (a). (Edition, 1857.)

" disputes relating to the crowns of Portugal and Spain, out of " the separation of the American possessions of both from the " European Governments, and out of the numerous and constantly " occurring struggles for dominion in Spanish America, so wisely " consistent with our just principles has been the action of our " Government, that we have under the most critical circumstances " avoided all censure, and encountered no other evil than that pro- " duced by a transient estrangement of goodwill in those against " whom we have been, by force of evidence, compelled to decide.

" In the contest between Spain and her revolted Colonies, we " stood aloof, and waited not only until the ability of the new " States to protect themselves was fully established, but until the " danger of their being again subjugated had entirely passed " away. Then, and not until then, were they recognised."*

We should not omit to notice, that in the application of these common principles in the case of the recognition of the Spanish American States, there was a difference between the conduct of the United States and the conduct of England. The United States waited till the facts warranted recognition, and then embraced the opportunity of setting the example of recognition to the rest of the world. England waited still longer, in the hope that delay might induce Spain to take the lead of her.

One remark more, and we may leave the case. The State Papers of the United States in the case are at the present moment of great value. The exposition of the law contained in them is the same in its principles as the English exposition; but the American exposition speaks to Americans more forcibly than the English exposition can speak. President Lincoln and President Davis both look on President Jackson and President Monroe as their predecessors. The precedent of 1822 is the common property of the Northern and Southern sections of the United States. It is binding on both alike. Both may be well content to be governed by such an authority. Each will find a representative in one of the Presidents quoted above. President Jackson, a native of South Carolina, now one of the Confederate States, has furnished the rule to be observed by neutral nations during

* Presidents' Messages, p. 585.

the continuance of the contest. President Monroe, a native of North Virginia, has furnished the rule to be observed at the close of the contest. The Southern statesman enforces delay in recognition, not only to obtain the clearest evidence for a correct decision, but to shield the decision from every unworthy imputation. The Northern statesman enforces recognition when the result of the contest is manifestly settled, not only as a measure due to the new Government, but in order that the opinion of other Powers as to the result may assuage the feelings excited by the civil war, and promote an accommodation between the contending parties.

Two cases are constantly referred to as instances of recognition which have no real bearing on the subject—the case of Greece and that of Belgium. Geographically they lie beyond the range of the title of these pages. I mention them by way of contrast. A few words will prove that they were instances, not of simple recognition, but of recognition coupled with direct intervention under circumstances peculiar to Europe.

Previously to its independence, Greece was subject to Turkey—a Christian nation under the dominion of a Mahometan Power. In addition, the Turkish rule was tyrannical. Now, the relations of the Christian Powers of Europe to Turkey have always been anomalous. It was not till the treaty of Paris, in 1856, that the latter was declared "to be admitted to participate in the advantages of the public law and system of Europe." When, therefore, Greece declared her independence of Turkey in 1822, Turkey was not fully within the pale of European law, and the sympathies of Europe were strongly excited in favour of Greece, on grounds of humanity and religion. After six years of war, the Great Powers interfered. In July, 1827, France, England, and Russia entered into a treaty, the preamble of which recites that they were "penetrated with the necessity of putting an end "to the sanguinary contest, which, by delivering up the Greek "provinces and the isles of the Archipelago to all the disorders "of anarchy, produces daily fresh impediments to the commerce "of the European states, and gives occasion to piracies, which not

" only expose the subjects of the high contracting parties to con-
" siderable losses, but besides render necessary burdensome mea-
" sures of protection and repression." It further states, that they acted upon the pressing invitation of Greece to England and France.

The Treaty contained the arrangements to be proposed, which were not those of absolute independence. A secret article was added, authorising the representatives of the Powers, in case of the rejection of the proposed arrangements, to discuss and determine the ulterior measures necessary.* The Greeks accepted the mediation; the Turks refused. Before the intervention ended and Greek independence was established, the Allies destroyed the Turkish fleet at Navarino, and a French army occupied the Morea. It is difficult to conceive anything more unlike simple recognition.

Belgium was united to Holland by the 55th Article of the Treaty of Vienna. The kingdom of the Netherlands was thus the creation of the Powers who signed that treaty. The union between the two populations proved uncongenial to both; and a revolution broke out in 1830. The King invited Austria, France, Great Britain, Prussia, and Russia, in their quality of Powers having signed the treaties of Paris and Vienna, which had constituted the kingdom of the Netherlands, to deliberate in concert with his Majesty upon the best means of putting an end to the troubles which had arisen in his states. This invitation was given under the 4th Article of the Protocol of Aix-la-Chapelle, of November, 1818, directing that the conferences contemplated in the Article should take place only upon a formal invitation on the part of the State, of which the affairs were to form the subject of deliberation. This invitation let in the jurisdiction of the Five Powers. It is unnecessary to trace the negotiations which followed. They assumed alternately the character of a mediation, of a forcible arbitration, or of an armed intervention, according to the varying events of the struggle, and the fluctuating views of the Powers interested in terminating it.† A quotation from the Protocol of the 20th of December,

* State Papers, xviii. p. 728.

† Wheaton's History of the Law of Nations, p. 354.

1830, will show the views entertained by the Five Powers of their jurisdiction,—a jurisdiction which they ultimately exercised by erecting Belgium into a separate kingdom :—

" The Plenipotentiaries have met to deliberate on the ulterior " measures to be taken, with the object of remedying the de- " rangement which the troubles in Belgium have caused in the " system established by the treaties of 1814 and 1815.

" In forming, by the treaties in question, the union of Belgium " with Holland, the Powers who signed those treaties had for " their object to establish a just balance of power in Europe, " and to secure the maintenance of the general peace.

" The events of the last four months have, unfortunately, " demonstrated that the perfect and complete amalgamation, " which the Powers wished to effect between these two countries, " had not been obtained; that it would be impossible for the " future to effectuate it; that thus the very object of the union " of Belgium with Holland is destroyed; and that henceforth it " becomes indispensable to recur to other arrangements to " accomplish the intentions for which this union was to have " been the means.

" The Conference will consequently employ itself in discuss- " ing and concerting the new arrangements most proper to " combine the future independence of Belgium with the stipula- " tions of existing treaties, with the interests and security of " other Powers, and with the preservation of the European " balance of power." *

This language sounds strangely unlike the acknowledgment of independence *de facto* obtained by a State itself. It does not require a legal intellect to perceive that the origin of the kingdom of the Netherlands, the purpose for which it was constituted, the request for mediation, and the rights of the Great Powers derived from the same treaty which constituted the kingdom, make the case of Belgium one unlike every other, and governed wholly by the European settlement of Vienna.

To return from this digression. The law now acknowledged may be stated in the following propositions :—

* State Papers, xviii. 749.

1. When a rebellion or insurrection has become a civil war, a foreign Power should consider the contending parties as two distinct parties, both entitled to the rights of belligerents.

2. While the civil war continues, a foreign Power desirous of preserving neutrality, should remain an impartial spectator. If, however, its own relations with the revolted province require, and the facts warrant such a recognition,—the foreign Power may recognise the separate political existence of the revolted province, so far as regards its foreign relations, without prejudging the question as to its ultimate and absolute independence of the parent State.*

This is a limited recognition. The subject is difficult, and deserves a few words to give some though probably an incomplete explanation. Mr. Canning said, in 1823, that the law of nations was entirely silent with respect to the course, which, under a circumstance so peculiar as the transition of colonies from their allegiance to the parent State, ought to be pursued. His policy then, is our chief guide now.

"In such contests,"—I quote from an American judgment upon a matter arising out of the Spanish American revolution, a sentence enumerating the possible courses of action,—"a nation "may engage itself with the one party or the other,—may "observe absolute neutrality;"—(inaction would have been a more accurate term;)—"may recognise the new State absolutely; "—may make a limited recognition of it."† We have thrown the first course wholly out of consideration: we are engaged with the last.

The period of civil war down to the ultimate recognition of the revolted province as an independent State, often gives rise to questions of great delicacy and difficulty in the relations between the revolted province and the foreign Power; especially if the revolution does not greatly interfere with commerce, and still more, if, as in the case of the Spanish American Colonies, the revolution actually increases commerce. The management of these relations belongs to the executive departments of the foreign Power. Nor is the difficulty of the management fully

* Halleck's International Law, c. iii., s. 21.

† *United States* v. *Palmer*, 3 Wheaton's R. 634.

known or appreciated, until cases involving these relations come before the Courts of Law. A few of such cases are to be found in the Law Reports during the period of the Spanish American revolution.* Up to a certain point, which it is impossible to fix abstractedly, communications and arrangements purely unofficial will serve the purpose. Beyond this point, they are insufficient for the interests of the foreign Power. Limited recognition is intended to supply what is wanted.

Limited recognition is effected by England, by means of an Order in Council or an Act of Parliament, according as its nature requires an exercise of the Prerogative or legislative enactment. Its nature and degree will, therefore, depend upon the exact terms of the Order in Council or the Act. An example of each will make the matter clear. The first example is that of a limited recognition under an Order in Council.

In the beginning of this century, the negroes of St. Domingo rose and took possession of certain parts of the island, and detached them, so far as actual occupancy could do, from the mother country of France and its authority, and maintained, within those parts at least, an independent government of their own. The English Government was favourably disposed towards this government, on the ground of its common opposition to France; but, at first, nothing was done that authorised Courts of Law to consider the island, or parts of it, as being other than still a colony, or parts of a colony, of France. Towards the end of 1806, and in 1807, Orders in Council were published to this effect: "British vessels are permitted to go to such parts " and places in the island of St. Domingo, as are not, or shall " not be, under the dominion and in the actual possession of " His Majesty's enemies." "The words," said Sir W. Scott, " *dominion and actual possession,* must mean something more " than the mere fact of possession. What is the legal meaning " of dominion? Its legal meaning implies rightful possession and " authority. As applied to public possession, it is the right of " legal authority. Here is a positive declaration of the State, that " parts of St. Domingo are neither in the possession nor in the " dominion of France. It is not necessary that this declaration

* *e.g.*, *Yrisarri* v. *Clement*, 2 C. & P. 225; *S.C.*, 3 Bing. 432.

" should amount to a perpetual recognition of the independence " of these places, as in the case of a formal and permanent " cession. It is sufficient that there is a rightful and acknow- " ledged suspension of the authority of France."*

This example illustrates the nature of limited recognition simply, and not the neutral character of the measure; for the measure was adopted with respect to a colony of France, during the great war with France. The neutral character of the measure must depend upon its following after, and not going beyond, well established facts. On this point, we may turn to the example of limited recognition under an Act of Parliament. It has already been before us, and we have seen that it was carried out in a spirit of neutrality. It was the acknowledgment of the commercial flag and the concession of commercial privileges to the Spanish American States, under the Act of 3 Geo. 4, c. 42, ss. 2 & 3.

It must, however, be added, that in a time of peace between England and both belligerents, the necessity for and value of this limited recognition have greatly diminished since the repeal of the Navigation Laws.

3. When the contest is really terminated, and the revolted province has established its independence of the mother country, the foreign Power may recognise the new State, without waiting for recognition by the mother country.

4. When independence is effectually established, recognition is a simple question of policy on the part of the foreign Power.

These principles of law are clear, and the foreign Power, in applying them, has to decide two principal questions of fact arising at two different stages: first, whether the insurrection has reached the magnitude of a civil war; and secondly, whether independence is actually established. Of these facts the foreign Power is the sole judge.

It is obvious, that, during the civil war, the revolted province and the mother country are not on the same footing in relation to the foreign Power. The mother country has diplomatic

* *The Manilla*, Edwards' R. 1.

relations, and almost always treaty engagements with that foreign Power. The revolted society is endeavouring to bring about such a change of circumstances, as to annul those engagements, so far as they relate to itself; and, if successful, claims to have brought about the change, and to be in a position to substitute new engagements. The claim is in derogation of existing treaty engagements, and ought, therefore, to be examined with due regard to the sanctity of their obligations. To be good, it must be based on fact. The circumstances must be completely changed, and the sovereignty of the mother country ousted by the sovereignty of the revolted province. If less than this be the case, the recognition of the independence of the revolted province by the foreign Power, involves some breach of faith to the mother country. Conducted thus with bad faith, or even with rashness, recognition is not only dishonorable to the foreign Power, but prejudicial to the revolted province. It justly exasperates the mother country, and gives fresh force to her efforts. Recognition can serve the interests of peace only when conducted with regard for precedent, and in a manner not unfriendly to the mother country. It then becomes the verdict of an unprejudiced by-stander, that the time has come for the mother country to retire from a hopeless contest. This verdict may carry weight with the calmer portion of the mother country. Earlier recognition cannot.

If we apply these principles to the case of the Confederate States, it must, I think, be clear that they have not achieved independence. Their case differs from that of the Spanish American States in one respect; there is no doubt of their having an established government. No rival faction opposes President Davis. But the government is not in full and undisputed exercise of sovereignty within the territory over which it claims authority.

1. War is being waged in Virginia, Kentucky, North Carolina, Tennessee, Arkansas, Mississippi, and Louisiana. A portion, at least, of the last is subject to the authority of the North. From the mouth of the Potomac to the mouth of the Mississippi, the Northern States have never receded from the command of the

waters which form an integral part of the country. The blockade is effective. The impossibility of erecting Prize Courts has caused the Confederate States to deviate from the rules of war, and send out a public vessel—the Alabama—to capture prizes, with the intention of not carrying them in for adjudication by a Prize Court. Their justification rests on necessity; the necessity proves their want of sovereignty. There is nothing to call for even limited recognition. The dominion over the ports of St. Domingo acquired by the negroes, which justified the limited recognition of the "anomalous black government," in order to change the character of the island from one of hostility in law into one of friendship in law, in accordance with fact; the extensive commerce which rendered necessary the recognition of the separate political existence of the Spanish American States, apart from their ultimate independence; both these circumstances—the extensive commerce and the dominion over the ports—are wanting here.

2. The territories of the Confederate States are undefined. The northern and western boundaries, and the south-western boundary towards New Orleans, are all unsettled. President Davis has made an army—he has probably made a nation; but he has not led the nation into the promised land; he has not made an independent sovereign State.

Still, no one who has watched the contest can doubt the result; the boundaries will be settled, the Northern States will be driven from the possession of the waters which they now command, and the Confederate States will be independent and sovereign. Recognition will then become a question of policy. Till then, the inconveniences of absolute neutrality are not so great as often represented. Recognition, apart from intervention and its accompaniment, war, will not open the ports, or bring over one bale of cotton. The real inconveniences of non-recognition begin when the time for recognition has arrived; when the cessation of the contest leaves the energies of the nation free for trade, and diplomatic intercourse is required in the interests of commerce. When that time arrives, the valour, the skill, the self-denial, and the patriotism displayed in the formation of the Confederate States,

will command a favourable hearing for their claim to be admitte into the community of nations. The claim will be allowed, as ought to be allowed, not only for the protection and regulatio of our own interests, which, protected or unprotected, must b affected by the new State, but also for two more cogent reasor —in order not to leave any civilized nation without the pale, an therefore only partially under the influence, of the public opinio of other nations; and in order to follow the great principle acknowledging facts. But no Englishman, I should hope, ca feel for the Confederate States the smallest enthusiasm. Mo of us believe that the world will gain by a division of th overgrown empire of the United States. Many of us ant cipate that the cause of negro emancipation will also gai Very few have any faith in the anti-slavery professions of th North, nor has our faith been strengthened by the late pr clamation. On the other hand, it is impossible not to thin that the negro population will occupy a stronger position i relation to their masters, when those masters are no longer sup ported, as hitherto, by the moral and physical power derive from union with the North. The greater facilities for escape o a long frontier, and the jealousy with which the North wi watch the South, must tend to improve their condition. Ther is no inclination among us to underrate the difficulties of emar cipation; for the security of the State it should be gradual; w should hail a step towards freedom—the slightest advanc from slavery to serfdom. But no such prospect is held ou by the statesmen of the South. Slavery is put forward as fundamental institution. The English Minister to whose lot may fall to make the recognition, after recording his admiratio of the struggle thus crowned with success, will have to add, tha England would be false to her traditions if she could welcom with heartiness a State, which, at the moment of its entrance int the community of nations, openly professes principles solemnl condemned by the whole Christian world.

THE

FOREIGN ENLISTMENT ACT.

BY

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SECOND EDITION.

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THE FOREIGN ENLISTMENT ACT.

THE Foreign Enlistment Act is the title commonly given to a Statute which was passed, in the year 1819, with two objects: first, to prevent the Enlistment of British subjects in the military or naval service of Foreign Powers without the licence of the Crown; and, secondly, to prevent, without the same licence, the Equipment of vessels to be employed in the service of one Foreign Power against another Foreign Power with which the country is not at war. The title has been taken from the first of these two objects. At the time when the Statute was passed, the enlistment of thousands of the veterans of the Peninsula in the service of the South American States attracted the attention of every one. At the present moment the Alabama, the Alexandra, and the Steam Rams have forced into prominence the subject of the Equipment of Vessels for belligerent Powers. The Statute imposes a restraint on such equipments; and it is, therefore, of importance to determine, if possible, the amount of restraint thus imposed, as well as the policy of the restraint; and to distinguish between such a sale of a vessel to one of two belligerent Powers as does not come within the Statute, and the equipment of a vessel for the same belligerent Power forbidden by the Statute. With this view, I have given, in the following pages, a short account of the legislation on the subject. I have attempted to examine both the policy and the interpretation of the Statute, in the hope of supplying materials for the discussions now proceeding in the Courts of Law and likely to take place in Parliament, and of contributing towards the formation of a just and dispassionate public opinion upon a question of difficulty.

There is a difference between the policy and the interpretation of the Statute, and the distinction between the two is shown most clearly by the difference of the methods used for their investigation. To interpret a Statute, we must look, in the first instance, at the words of the Statute. The historical circumstances out of which it arose, and the evils it was intended to prevent, can be taken into consideration only when the terms employed are doubtful, or the grammatical meaning uncertain. If the terms are clear and exact, we can go no further. When we have arrived at the grammatical meaning of the words, we have arrived at the interpretation of the Statute. This interpretation is peculiarly the duty of Courts of Law. But in examining the policy of a Statute the historical circumstances under which it was passed, and the evils it was intended to prevent, are of the first importance. A knowledge of them is necessary in order to understand the objects which the statesman who framed the law had in view. His exact words often fail to express his policy fully. He may have found it impossible to carry it out completely, and his words may be the result of a compromise. Or, again, he may have accidentally used language inadequate for his object. The grammatical meaning of his words expresses only the degree to which he has made his policy law. The best exposition of that policy will be found in the State Papers of the Executive Department to which the subject belonged. These State Papers, therefore, and the history of the events connected with the enactment, explain the policy of a law; the Reports of the Courts give us the interpretation of the law. Taken together, the two make up a complete account of the legislation on any subject.

The framers of the Foreign Enlistment Act had before them an Act of the Congress of the United States passed in the year 1818; and this Act follows almost word for word an earlier law of the 5th of June, 1794, which it was introduced to amend, bearing the title of "An Act in addition to an Act "for the punishment of certain crimes against the United "States." Thus the English Statute of 1819 traces its origin to the American Statute of 1794. They are the enactments of

two nations, deriving their law from the same sources, adopting the same legal language and the same rules for the interpretation of that language, and in the habit of appealing each to the decisions of the Courts of the other, not indeed as binding precedents, but as authorities of value. The American Act was passed in consequence of the conduct of the French Minister at Philadelphia, in the summer of 1793,—conduct unsurpassed for effrontery, even in a generation which abounded in instances of flagrant contempt for the rights of nations. In his defence of the English Statute in 1823, Mr. Canning said, that it was enacted on the principle of neutrality adopted by the Americans on that occasion. We may look, therefore, to the history of the American Act, and the decisions of the American Courts upon its interpretation, to throw light upon the policy and interpretation of the English Act. For its own sake, too, this portion of history is worth our study. The summer of 1793 was a critical period of American diplomacy. The Act of 1794 is a landmark in American history. The neutrality then secured has influenced all subsequent American policy.

The year 1793 opened with the execution, on the 21st of January, of Lewis the Sixteenth of France. On the 1st of February, the National Convention of France declared war against England and Holland; and the news of the declaration reached America in the beginning of April. Washington had entered upon the office of President of the United States for the second time, on the 4th of March; and the Members of his Cabinet were Thomas Jefferson, Secretary of State for Foreign Affairs; Alexander Hamilton, Secretary of the Treasury; Henry Knox, Secretary of the War Department; and Edmund Randolph, Attorney-General. Of these four, Hamilton and Jefferson were the master spirits. They were unlike one another in every respect. Hamilton was both a lawyer and a soldier. He had been the favourite aide-de-camp of Washington in the War of Independence, and had brought away from his military service an ardent admiration for his chief, and a deep conviction of the necessity of a strong central

government. This conviction guided every part of his policy. The revision of the Constitution in 1789, undertaken to strengthen the Federal government, had called into existence two parties—the Federalists and the Antifederalists; the political ancestors of the respective supporters of Federal Rights and State Rights. Hamilton was the foremost man of the Federal party. In foreign politics, his sympathies were towards England.

Jefferson had been educated for the Bar. At an early age he entered the Provincial Assembly of Virginia, where he distinguished himself in the debates on the tyranny of the mother-country, and he prepared the draft of the Declaration of Independence. In 1782, he was sent as Minister to Paris, and remained there till the end of 1789, when he returned to America, and was appointed Secretary of State. Thus he had taken a prominent part in the American Revolution, and been present at the beginning of the French Revolution. During his residence in Paris, he had thrown himself, heart and soul, into the most liberal section of French society. He had seen the enthusiasm which ushered in the Revolution, and he felt intense interest in its success. The pillage of the Tuilleries, and the arrest of the King happened after his return to America. The recital of these excesses could not obliterate the impression of what he had beheld. At the time he even found excuses for them. His sympathies were expressed loudly in private, and though repressed by his position gave a colour to his policy in office. The revision of the Constitution had taken place while he was in France; but he had disapproved of it in his letters, and on his return joined the Antifederalists. Thus there was scarcely one political question on which he and Hamilton were not opposed. He considered Hamilton a royalist scarcely disguised; and Hamilton considered him a leveller. Their political differences produced personal dislike. The private letters of each abound in scornful allusions to the other.

On questions of disputed policy, Randolph leaned towards Jefferson, and Knox followed Hamilton. Jefferson describes

his position by saying he was in a minority of one and a half to two and a half in the Cabinet.

The relations of the United States to France at the moment were intricate, and calculated to involve them, whether they wished it or not, in the contest. The Treaty of Commerce of 1778, by which France recognised the independence of the United States, was accompanied by a Treaty of Alliance, entered into with particular regard to the possibility of a rupture between England and France, in consequence of the relations and good understanding established between France and the United States. Among the clauses framed with this view, the Treaty contained stipulations so worded as to be independent of the occurrence of such a war, and to look beyond the war if it should actually occur. They were reciprocal guarantees of territory. In the event of the war, the United States guaranteed to His Most Christian Majesty the possessions of the Crown of France in America, as they should be fixed by the future Treaty of Peace at the end of the war. The war between England and France took place. It was ended by the Treaty of Peace of 1783. And thus the possessions of the Crown of France in America, as fixed by that Treaty, were the possessions guaranteed to His Most Christian Majesty by the United States. The case that now arose was not contemplated by the framers of the guarantee, and certainly did not come within its spirit. Franklin and his coadjutors, who negotiated the Treaty for the United States, were ready to incur great sacrifices to secure the alliance of France; but they never meant to bind their country by a guarantee through all time to engage, at the call of France, in offensive no less than defensive war, to be waged possibly for the gratification of ambition, or for some point of honour, in support of objects purely European, at a moment most inconvenient to their country, without reserving to their country a voice as to the policy, the wisdom, or the justice of the war. But no such reservation had been introduced in express terms.

The Treaty of Commerce contained two articles, the seventeenth and the twenty-second, destined to cause more difficulty

even than the stipulations of the Treaty of Alliance. By the seventeenth article, French ships of war and privateers were to be at liberty to enter the ports of the United States with their prizes; and, when there, were to be free from search or seizure, and from any jurisdiction on the part of the officers of the port over the legality of their prizes, and were to leave with them freely for the places named in their commissions. But the captors of French prizes were not to be allowed an asylum or retreat, and, if forced by stress of weather to enter, were to be ordered out as soon as possible. By the twenty-second article, privateers belonging to subjects of Powers at war with France were not to be fitted out in the ports of the United States, nor to sell their prizes, nor unload their cargoes there. They were to be allowed to buy only the provisions necessary for their voyage to the nearest port of their own State.* This article gave rise in the sequel to the question, Did the negative engagements thus made with France regarding Powers at war with her, carry with them permission to her to fit out privateers within the United States?

No other nation had so favourable a treaty with the United States, and thus, now that she was at war, France enjoyed especial privileges in their ports. The concession, however, of these privileges did not render neutrality on the part of the United States impossible. The rule has long been established by the practice of nations that treaties made antecedently to a war, and not in contemplation of the war, promising exclusive privileges and even limited succours to one of the belligerents, may be fulfilled without a departure from neutrality. Still this concession did render neutrality difficult. Randolph, the Attorney-General, said, "The situation of the United States is extremely peculiar. They "are bound to pursue a different conduct to the different "warring powers. To France they must give the preference "by treaty; to Holland they must assign the next rank of "favour by treaty. Great Britain stands upon the law of "nations, pure and unqualified. Hence, in this disparity of "relations, they will be often thrown into great perplexities."

* Martens' Recueil, ii. 587.

These relations to France constituted "the particular circumstances," to which, as we shall see later, the Government referred in their communications with England as explanatory of their conduct towards France.

The tidings of the war caused Washington deep anxiety. The task which lay before him was not easy. His great desire for his country was to remain at peace. But the engagements of his country seemed to render peace impossible; his constitutional advisers were divided, and it soon appeared that the nation also was divided. However true it might be, that the sincere wish of the wiser part of the community was, to use his own words in a letter to the Earl of Buchan,—"to have "nothing to do with the political intrigues or squabbles of "European nations, but on the contrary to exchange commodi-"ties and live in peace and amity with all the inhabitants of "the earth," it was no less true that there still remained from the War of Independence a rancorous feeling against the English, and a strong attachment to the French. There was indeed a country party which shared his wish for peace; but the inhabitants of the great cities were not averse to war with England, even if they did not desire it. They did not conceal their French sympathies. A few weeks later a French frigate captured an English vessel at anchor in the Bay of Delaware, and brought her into Philadelphia. The act was an open violation of American territory, and the vessel was ultimately restored. But upon her coming into sight, the inhabitants of the city crowded by thousands to the quays, and when they saw the English colours reversed, and the French floating above, they burst into peals of exultation. Jefferson himself doubted if the spirit of the people could be repressed within the limits of a fair neutrality. Later in the summer, the feeling at Boston was shown in a still more remarkable manner. The French consul there was allowed by the Custom-House officers to make warlike preparations notwithstanding the orders of the Government, and was encouraged by men high in office.

At this conjuncture, Hamilton was prepared to adopt a course which would have cancelled the obligations of the United

States to France, and of which France would justly have complained. Jefferson was unstable, and inclined to drift with his sympathies. This course would soon have ceased to be neutrality. To the personal character and influence of Washington is due the policy actually adopted, and the legislation we are now discussing.

Washington immediately submitted to the members of his Cabinet a series of questions on the duties of the country as arising from general international law and from the special obligations to France. They agreed in some points; on other points they differed. They agreed that a proclamation should be issued, forbidding American citizens to take any part in the hostilities, and warning them of the penalties attached to carrying contraband of war. They agreed that a Minister from the French Republic should be received. They differed in their interpretation of the Treaties. Hamilton maintained that the United States were entitled to consider the Treaties as suspended by the change of Government in France and the change of circumstances, and that the guarantee clause, being inserted in a treaty of mutual defence, was applicable only to a defensive war, whereas the present was an offensive war on the part of France. He wished the Government to declare these views on receiving the Minister.* Jefferson replied that Treaties were made with nations, not with Governments, and remained binding notwithstanding the changes of the latter: and that it was not so certain that the guarantee clause would draw them into war, as to authorise them to declare the Treaties null.† The papers written by the two exhaust the subject. They are interesting, not only because they reflect the character of the writers, but still more because they show the careful discussion the subject underwent. Ultimately, Washington resolved to put off the decision as to the guarantee till the question arose in practice. We, too, may leave it here. The question never called for a decision. France did not claim the fulfilment of the guarantee. The proclamation determined

* Hamilton's Works, iv. 362. † Jefferson's Works, vii. 611,

upon was issued, without delay, on the 22nd of April. It was as follows:—

"Whereas it appears that a state of war exists between "Austria, Prussia, Sardinia, Great Britain, and the United "Netherlands, on the one part, and France on the other part; "and the duty and interest of the United States require, that "they should with sincerity and good faith adopt and pursue "a conduct friendly and impartial towards the belligerent Powers:

"I have therefore thought fit by these presents to declare the "disposition of the United States to observe the conduct afore-"said towards those Powers respectively, and to exhort and "warn the citizens of the United States carefully to avoid all "acts and proceedings whatsoever which may in any manner "tend to contravene such disposition.

"And I do hereby also make known, that whosoever of the "citizens of the United States shall render himself liable to "punishment or forfeiture under the law of nations, by com-"mitting, aiding, or abetting hostilities against any of the said "Powers, or by carrying to any of them those articles which "are deemed contraband by the modern usage of nations, will "not receive the protection of the United States against such "punishment or forfeiture; and further, that I have given "instructions to those officers to whom it belongs, to cause "prosecutions to be instituted against all persons, who shall, "within the cognizance of the Courts of the United States, "violate the law of nations with respect to the Powers at war, "or any of them."*

The proclamation was much discussed. Some said that it was unconstitutional, and that the President had usurped the functions of Congress in declaring the intentions of the United States. Others regretted the want of expressions of interest in France. They wished for a sympathetic neutrality. Others, more friendly to the spirit, criticised the language. They noticed that the word "neutrality" was not introduced. The objections were of importance at the time, because many of them were taken up and repeated by the Minister from the

* American State Papers, i. 44.

French Republic. Hamilton answered them in a series of very able letters, written under the signature of Pacificus,* and by degrees the wisdom of the proclamation became acknowledged. For us, the importance of the objections has passed away. The proclamation alone remains of interest. Though the word neutrality is not introduced, it acquired the title of the Proclamation of Neutrality, and was the beginning of that neutral policy which American statesmen and American jurists speak of as the cherished policy of their country.

On the same day on which this proclamation was issued, news reached Philadelphia of the landing, at Charleston, of Citizen Genet, the New Minister of the French Republic. M. Genet was a brother of Madame Campan, the faithful attendant of Marie Antoinette; but he was a furious Republican. He was selected for his mission, so ran his instructions, on account of his devotion to the cause of liberty and equality. He was to induce the United States to make common cause with the French Republic. With this view, he was to negotiate a commercial treaty, under which the Americans were to have free trade with the French islands, on condition of their guaranteeing the possession of them to the French; and to express the readiness of the French Government to extend the treaty into a national compact, by which the political interests of the two nations should be made one with their commercial interests, for the extension of the empire of liberty, and the punishment of the Powers which still adhered to an exclusive colonial and commercial system, by refusing their vessels admission into the ports of the two contracting nations. He was to point out that a war with Spain was imminent; and that this compact would soon lead to the expulsion of the Spaniards from Louisiana, and thus open the navigation of the Mississippi,—an object much desired in the United States,—and perhaps would add "the bright star of Canada to the American constellation." He was to endeavour to guide public opinion by means of the press; but, to avoid suspicion, he was to employ

* Federalist, ii. at the end.

newspapers published at a distance from Philadelphia. His mission, he was told, required great activity; but, to be successful, must be secret. He was reminded that the American character was cold, and warmed only by degrees, and that indirect measures would be at least as useful as official communications. He was to kindle the enthusiasm of those who were susceptible of it, and to convince, by his arguments, the cool intellects of the President and of the Senate. In addition, he was furnished with blank letters of marque, to be delivered to French and American privateers in the event of a naval war.

He was quite unfit for his post. He understood neither the character of the people with whom he had to deal, nor the constitution of the United States, and repeated bad arguments and high-sounding nonsense, till he disgusted even those who were favourably inclined to France. One of Hamilton's correspondents has given a very amusing account of the first impression he made. His character and manners had so considerable a share in the results of his mission, that the letter becomes historical:—"You have heard much," says the writer, "of this "Citizen, no doubt, and, therefore, anything from me will seem "superfluous; but, as I am writing of the man that we are all "afraid of, permit me to say that he has a good person, fine ruddy "complexion, is quite active, and seems always in a bustle, "more like a busy man than a man of business. A Frenchman "in his manners, he announces himself in all companies as the "Minister of the Republic, &c., talks freely of his commission, "and, like most Europeans, seems to have adopted mistaken "notions of the penetration and knowledge of the people of the "United States. He is, and appears to be, highly gratified by "the affectionate treatment he has thus far experienced from "the Americans. His system is, I think, to laugh us into the "war if he can."*

He arrived at Charleston on the 8th of April. Without a moment's delay he obtained the leave of the Governor of the State to arm privateers, on condition of taking some precautions to shield for a time the neutrality of the United States.

* Hamilton's Works, v. 561.

Before a week was over, one privateer was at sea, and three more were in preparation—the Republican, the Sansculotte, the Anti-George, and the Citizen Genet. Hearing that his reception at Philadelphia was doubtful, he resolved to proceed by land instead of by sea, in order, as he said, to arouse the public spirit on his way, and to arrive at the seat of Government with the certainty of being received with the distinction due to his character. He forwarded to his Government a minute report of his journey, and of the state of public feeling. His journey, he said, had been an uninterrupted succession of civic festivities, and his entry into Philadelphia a triumph for liberty. The brotherly devotion of the Americans showed the real worth of the official declarations of neutrality. The people exhibited pure and innocent virtues; their leaders were corrupt and ambitious. The ardent and sublime love of the simple-minded country people, and of the poor but industrious inhabitants of the towns for French principles, stood in marked contrast with the grovelling idolatry of the English constitution on the part of the great merchants. Everywhere the people ran together to welcome him. The Federalists alone,—the party which aspired to monarchy, or to an aristocracy as odious,—stood aloof. Six thousand citizens had received him at Philadelphia; while at the same moment, three hundred merchants, chiefly English, had waited upon Washington to thank him for his proclamation. There could be no mistake as to the public opinion. Washington was deeply wounded. Addresses of congratulation had poured in. Among so many, the address of a body called the Ciceronian Society had particularly delighted him, though it was somewhat diffuse. "You remember," he adds, "that Cicero, "though a little wordy, expressed noble sentiments." He could scarcely realise the honour done to him. Such was his report. The next day he had his first audience of Washington. He assured him that France did not wish the United States to become a party to the war. Washington was reserved, and did not even allude to the French Revolution or the war. M. Genet wrote home that Washington in his old age was unlike the Washington of history.

Meanwhile, the privateers were not idle. In a despatch of the 18th of May, M. Genet said that they were making prizes every day. By the end of May, the Sansculotte had captured eight large English vessels. By the end of the summer, fifty vessels were captured. These prizes were taken into the ports of the United States under the seventeenth article of the Treaty of Commerce. But here a difficulty arose. That article further stipulated, that no cognizance of the prizes should be taken by the officers of the ports. Now the French Republic had recently attempted to give their consulates a jurisdiction over prizes, and thus to constitute them Courts of Admiralty. The object of the attempt was to avoid the chance of the prize being recaptured on the voyage to a French port, and thus to defeat the superiority of the English navy. Accordingly, the French consuls at the ports into which the prizes were brought, condemned and sold them in the exercise of this new jurisdiction. The English Minister, Mr. Hammond, at once complained of the proceeding. M. Genet defended it; but the American Government refused to allow his claim. "Every nation," said Mr. Jefferson, "has, of natural right, entirely and exclusively, all "the jurisdiction which may be rightfully exercised in the "territory it occupies. If it cedes any portion of that juris- "diction to judges appointed by another nation, the limits of "their power must depend on the instrument of cession. The "United States and France have, by their consular convention, "given mutually to their consuls jurisdiction in certain cases "especially enumerated. But that convention gives to neither "the power of establishing complete Courts of Admiralty "within the territory of the other, nor even of deciding the "particular question of prize or not prize. The consulates "of France, then, cannot take judicial cognizance of those "questions here."*

The principles thus laid down by the Executive Government afterwards received the sanction of the Supreme Court; and the admiralty jurisdiction which had been exercised in the United

* American State Papers, i. 144.

States by the consuls of France was judicially declared not warranted by treaty, and not of right.*

It can scarcely be called a digression from our subject, to add, that, a few years later, Lord Stowell pronounced a similar judgment on the same point. A claim to the property of a vessel came before him, founded on a sentence of condemnation by the French consul at Bergen, a neutral town. He described the act of the French consul as a licentious attempt to exercise an authority never conceded by any country to a foreign agent of any description residing within it. "Mark," he said, "the "consequences which must follow from such a pretended conces- "sion. It gives one belligerent the unfair advantage of a new "station of war, which does not properly belong to him; and "it gives to the other the unfair disadvantage of an active "enemy in a quarter where no enemy would naturally be found. "The coast of Norway could no longer be approached by the "British merchant with safety, and a suspension of com- "merce would soon be followed by a suspension of amity. "Wisely, therefore, did the American Government defeat a "similar attempt made on them at an earlier period of the "war: they knew, that, to permit such an exercise of the "rights of war within their cities, would be to make their "coasts a station of hostility."

Thus, with equal care, both countries—the United States when neutral, England when a belligerent—repressed a practice which had the effect of rendering a neutral territory a station of hostility.†

A still more important point next engaged the attention of the Government—the manning of the privateers. They were manned in part by citizens of the United States enrolled within the country. And with the manning was connected a somewhat more technical though undoubted violation of the sovereign rights of the United States; the privateers were also commissioned within the country. M. Genet openly declared that no law of the United States authorised the Government

* Glass *v.* The Betsey, 3 Dallas, 616. A. D. 1794.
† The Flad Oyen, 1 C. Rob. 135.

to prohibit their citizens from joining the French, or the French in their sea-ports from serving France. Neither the one nor the other, therefore, he argued, could be guilty of any offence in setting on foot these armaments; and the Americans on board French vessels must be taken as having renounced the immediate protection of their country to join France. He defended the granting of commissions, on the ground that it had always been the custom in the French naval service to transmit commissions to consuls in foreign countries, to be delivered to French vessels in case of war. In his reasoning he attempted to extend the right beyond French vessels, and, in practice, he granted commissions to American vessels.*

The Government would not admit either this right, or the principle that enlistment carried with it a change of allegiance. The result of the discussion of the former point was, that in the following year his successor discontinued the practice of granting commissions, and cancelled those already issued. The latter point gave occasion to the first great American State Trial. Gideon Henfield, an American sailor, serving on board the Citizen Genet, was arrested by the order of the Government. M. Genet demanded his immediate release. "His mind," he said, "could not conceive, and his pen almost refused to state, "the crime laid to Henfield's charge:—the serving France, and "defending with her children the common and glorious cause of "liberty." He received for answer the assurance that Henfield's case would be safe in the hands of a jury; and the opinion of the Attorney-General, to the effect—First, that the very act by which Henfield was said to have been taken under French protection was a violation of the sovereignty of the United States; secondly, that Henfield was punishable for having violated the treaties—the supreme law of the land, under which the citizens of the United States were at peace with the subjects of England, Prussia, and Holland; and Thirdly, that Henfield was indictable at Common Law, because his conduct came under the description of disturbing the peace of the United States.

* American State Papers, i. 79, 83.

Henfield was tried on the 27th of July. The trial was felt by the Government to be one of great importance. The judges of the Supreme Court were all summoned. Hamilton, active throughout, lent the Counsel engaged the aid of his suggestions and his learning. The indictment was drawn with great care. In the principal counts Henfield was charged with having enlisted in the French service against the nations with whom France was at war, in violation of the treaties which subsisted between the United States and those nations, and which formed part of the law of the United States. The Judges agreed that the act thus charged was a crime. On his trial, he was shown to have acted in ignorance, and, when first informed of the unlawfulness of the act, to have expressed his regret, and to have declared that he would live and die an American. His ignorance and contrition told in his favour, and he was acquitted. The popular feeling was with him, and the verdict was received with joy. M. Genet was elated. He issued invitations to a banquet to "meet Citizen Henfield," and formally took him under the protection of the French Republic. The Editor of the American State Trials adds, with some humour, that this protection did not avail him much, for that soon afterwards he set out on a new cruise, and was taken prisoner by the English.*

The verdict made Washington anxious for distinct legislation.

We must go back to the middle of May, when the proceedings of M. Genet at Charleston, were first reported in Philadelphia, and Mr. Hammond first called the attention of the Government to the subject we have been following out. He remonstrated besides on two other subjects. One was the export of arms; the other, the equipments. Mr. Jefferson replied, on the 25th of May:—

"The purchase of arms and military accoutrements by an "agent of the French Government in this country, with an "intent to export them to France, is the subject of another of "the memorials. Our citizens have been always free to make,

* Wharton's State Trials of the United States, p. 49.

"vend, and export arms. It is the constant occupation and "livelihood of some of them. To suppress these callings, the "only means, perhaps, of their subsistence, because a war "exists in foreign and distant countries, in which we have no "concern, would scarcely be expected. It would be hard in "principle, and impossible in practice. The law of nations, "therefore, respecting the rights of those at peace, does not "require from them such an internal derangement of their "occupations. It is satisfied with the external penalty pro- "nounced in the President's Proclamation, that of confiscation "of such portion of these arms as shall fall into the hands of "any of the belligerent Powers on their way to the ports of "their enemies. To this penalty our citizens are warned that "they will be abandoned.

"The practice of commissioning, equipping, and manning "vessels in our ports, to cruise on any of the belligerent parties "is entirely disapproved; and the Government will take effec- "tive measures to prevent a repetition of it."*

Thus the intention of the Government not to prevent the export of arms is placed by Mr. Jefferson side by side with the intention to prevent the equipments. It is worthy of notice, that, in his despatch of the same date on the same subject to the French Minister then at Philadelphia, this latter intention is not so decidedly expressed. He contents himself with saying that the Government had received positive statements regarding them: but that their unwillingness to believe that the French nation could be wanting in respect and friendship to them, led them to suspend their assent to and conclusions upon these statements, till further evidence was obtained.† The truth is, Washington and his ministers had not made up their minds as to what they meant to do. Washington felt the difficulty expressed at this moment among ourselves, that ship-building is a branch of trade. In a letter written a week earlier, he said:—"I am not disposed to adopt any measure which may check "ship-building in this country: nor am I satisfied that we should

* Jefferson's Works, iii. 558.

† American State Papers, i. 69.

"too promptly adopt measures, in the first instance, that are "not indispensably necessary. To take fair and supportable "ground I conceive to be our best policy, and it is all that can "be required of us by the Powers at war: leaving the rest to "be managed according to circumstances and the advantages to "be derived from them."*

In one sense certainly these equipments were connected with the trade of ship-building; but the experience of the summer, and the conduct of M. Genet proved that they were far more nearly related to the assumed consular jurisdiction, the granting of commissions, and enlistment; and that they belonged not to the category of commercial enterprizes, but to that of the conversion of neutral territory into a station of hostility. Circumstances soon occurred that brought the matter to a crisis. One of the privateers, the Citizen Genet, came with a prize into the port of Philadelphia. Mr. Jefferson then told M. Genet that the President, "after mature considera- "tion and deliberation, was of opinion that the arming and "equipping vessels in the ports of the United States, to cruise "against nations with whom they were at peace, was incom- "patible with the territorial sovereignty of the United States; "that it made them instrumental to the annoyance of those "nations, and thereby tended to compromise their peace; and "that he thought it necessary, as an evidence of good faith to "them, as well as a public reparation to the sovereignty of the "country, that the armed vessels of this description should "depart from the ports of the United States."

M. Genet defended his conduct. He relied mainly on the articles of the Treaty of Commerce on Privateers and Prizes. They were, indeed, the strong points of his case. But his arguments have no interest for us, and failed to convince the President.

The Government now advanced a step further, and, on the 5th of June, communicated both to Mr. Hammond and to M. Genet their decision. Mr. Hammond had urged upon them not only to repress these privateers for the future, but to

* Sparks' Washington, x. 346.

restore every capture they might bring into the ports of the United States. The Government acceded to the first demand, and refused to accede to the second. These are the words of the despatch:—

"The President, after a full investigation of this subject, and "the most mature consideration, has charged me to commu- "nicate to you that the first part of this application is found to "be just, and that effectual measures are taken for preventing "repetitions of the acts therein complained of; but that the "latter part, desiring restitution of the prizes, is understood to "be inconsistent with the rules which govern such cases, and "would, therefore, be unjustifiable towards the other party.

"The principal agents in this transaction were French citizens. "Being within the United States at a moment when a war "broke out between their own and another country, they deter- "mine to go into its defence; they purchase arms and equip a "vessel with their own money, man it themselves, receive a "regular commission from that nation, depart out of the "United States, and then commence hostilities by capturing a "vessel. If, under these circumstances, the commission of the "captors was valid, the property, according to the laws of war, "was, by the capture, transferred to them, and it would be "an aggression on their nation for the United States to rescue "it from them, whether on the high seas, or on coming into "their ports. If the commission was not valid, and, conse- "quently, the property not transferred by the laws of war to "the captors, then the case would have been cognizable in our "Courts of Admiralty, and the owners might have gone thither "for redress. So that, on neither supposition, would the "executive be justifiable in interposing.

"With respect to the United States, the transaction can be "in no wise imputed to them. It was on the first moment of "the war, in one of their most distant ports, before measures "could be provided by the Government to meet all the cases "which such a state of things was likely to produce, im- "possible to have been known, and therefore, impossible to "have been prevented by the Government. . . . . .

"The measures now mentioned are taken in justice to one "party; the ulterior measure of seizing and restoring the prizes "is declined in justice to the other, and the evil thus being "arrested, will be of very limited effect, perhaps, indeed, soon "disappear altogether." *

To M. Genet, Mr. Jefferson began by referring to his communication already mentioned, and then added:—

"After fully weighing again, however, all the principles and "circumstances of the case, the result appears still to be, that "it is the right of every nation to prohibit acts of sovereignty "from being exercised by any other within its limits; and the "duty of a neutral nation to prohibit such as would injure one "of the warring Powers; that the granting military com-"missions within the United States by any other authority "than their own, is an infringement of their sovereignty, and "particularly so when granted to their own citizens to lead "them to acts contrary to the duty they owe to their own "country; that the departure of vessels thus illegally equipped "from the ports of the United States will be but an acknow-"ledgment of respect analogous to the breach of it, while it is "necessary, on their part, as an evidence of their faithful "neutrality. On these considerations, the President thinks "that the United States owe it to themselves, and to the "nations in their friendship, to expect this act of reparation "on the part of vessels marked in their very equipments with "offence to the laws of the land, of which the law of nations "makes an integral part." †

Washington expected that this request would be enough, and was unwilling to use harsher language. Throughout these transactions, he remembered that the United States were under great obligations to France for assisting them to attain independence, while, at the same time, he never forgot that the United States were now independent. But M. Genet was not to be deterred by a notice so delicately worded. He disputed the ground vigorously. He repeated his former arguments; he

* Jefferson's Works, iii. 473.

† American State Papers, i. 81.

appealed to Jefferson not to lower their discussions to the "level of ancient politics by diplomatic subtleties;" and protested against being met by "the private or public opinions of the President" and "aphorisms from Vattel." His conduct, as well as his correspondence, became more and more extraordinary. He surrounded himself with the most violent republicans, he helped to set on foot democratic societies, he wrote in the anti-federalist newspapers, and sought support among those whom he called good citizens against the orders and proclamations of the Government. Above all, new privateers were equipped. The Vainqueur de la Bastille was commissioned at Charleston. A schooner and a sloop were commissioned at Boston; and the equipment of the Republican was attempted at New York. This was done at a distance from the seat of Government. But now he armed a prize, the Little Sarah, with the name of the Little Democrat, under the very eyes of the Government, in the port of Philadelphia. Jefferson went to him on the 10th of July, and complained that she had been armed contrary to the decision of the President, and was, as he heard, to sail that very day. M. Genet broke out into such a voluble strain of declamation, that Jefferson could not thrust in a word. He accused the Americans of having violated their Treaties. He spoke of the friendly propositions from France of which he had been the bearer, and said that the answer ought not to have been given without consulting Congress, and that he should urge the President immediately to convene Congress. After this outburst he became moderate. At the mention of Congress, Jefferson explained that the questions at issue belonged to the executive department, and that the Constitution had lodged with the President the last appeal. M. Genet bowed, expressed his astonishment, and said he could not congratulate Mr. Jefferson on such a Constitution. Jefferson then requested him to detain the vessel. He was embarrassed. He said he could not promise; but he could say that she would not be ready for some time. Jefferson concluded from his look and gesture that she would not leave before the President's will was known. M. Genet begged that a guard might

not be put on board, as she was filled with high-spirited patriots who would resist. He assured Jefferson that there was no occasion for force.* Jefferson trusted to these assurances, and the body of militia, which had been ordered out to detain the vessel, was dismissed. Washington was perplexed, "What "is to be done," he wrote, next day, to Jefferson, "in the "case of the Little Sarah? Is the Minister of the French "Republic to set the act of the Government at defiance with "impunity; and then threaten the executive with an appeal "to the people? What must the world think of such conduct, "and of the Government of the United States in submitting to "it?" The day after she was detained by the orders of Washington. Within three or four days she was sent out by the orders of M. Genet. She cruised on the American coast, and the first news which the Government received of her movements was from the complaint of an American captain, that his vessel had been maltreated by her.

Thus, while the Government remonstrated, M. Genet acted. He impugned the constitutional authority of the President, neglected his wishes, and violated his positive commands. Such conduct could be borne no longer. The Cabinet met almost daily. Jefferson has left notes of their proceedings, and a paper of questions proposed by the President and answered by his Ministers. We are thus admitted behind the scenes to see their difficulties and their divisions. One of the questions related to the treatment of the privateers fitted out at Charleston before the date of the President's prohibition. The Attorney-General was of opinion that they should be ordered away, not to return till they had been to the dominions of their own sovereign, and thereby purged the illegality of their origin: and this opinion was adopted by Washington. Another question shews the anxiety of Washington about trade, which we noticed before:—"The United States being a ship-"building nation, may they sell ships, prepared for war, to both "parties? *Thomas Jefferson*—They may sell such ships in "their ports to both parties, or carry them for sale to the

* Sparks' Washington, x. 536

"dominions of both parties. *E. Randolph*—of opinion they "could not sell them here; and that, if they attempted to "carry them to the dominions of the parties for sale, they "might be seized by way of contraband. *Hamilton* of same "opinion, except that he did not consider them as seizable for "contraband, but as the property of a Power making itself a "party in the war by an aid of such a nature, and consequently "that it would be a breach of neutrality."*

At last, after much discussion, a Circular Letter was issued on the 4th of August to the Collectors of Customs, directing them to keep a vigilant eye on whatever was passing in the ports and creeks of their districts, and to report any breaches of neutrality to the Governor of the State. The letter enclosed a schedule of rules "adopted by the President as deductions "from the laws of neutrality, established and received among "nations."

The letter ran thus:—

"No armed vessel, which has been, or shall be, originally "fitted out in any port of the United States by either of the "parties at war, is henceforth to have asylum in any district "of the United States. If any such armed vessel shall appear "within your district she is immediately to be notified to the "Governor and Attorney of the district; which is also to be done "with respect to any prize that such armed vessel may bring "or send in . . . . The purchasing in and exporting from the "United States, by way of merchandise, any articles commonly "called contraband, being generally warlike instruments and "military stores, is free to all the parties at war, and is not to "be interfered with. If our own citizens undertake to carry "them to any of those parties, they will be abandoned to the "penalties which the laws of war authorize."

The following were the rules enclosed:—

"1. The original arming and equipping of vessels in the "ports of the United States by any of the belligerent parties for "military service, offensive or defensive, is deemed unlawful.

"2. Equipments of merchant vessels by either of the belli-

* Jefferson's Works, ix. 158.

" gerent parties in the ports of the United States, purely for " the accommodation of them as such, is deemed lawful.

" 3. Equipments in the ports of the United States of vessels " of war in the immediate service of the Government of any of " the belligerent parties, which, if done to other vessels, would " be of a doubtful nature, as being applicable either to com- " merce or war, are deemed lawful; except those which shall " have made prize of the subjects, people, or property of " France, coming with their prizes into the ports of the United " States pursuant to the seventeenth article of our Treaty of " Amity and Commerce with France.

" 4. Equipments in the ports of the United States, by any " of the parties at war with France, of vessels fitted for " merchandise and war, whether with or without commissions, " which are doubtful in their nature, as being applicable " either to commerce or war, are deemed lawful, except those " which shall have made prize, &c.

" 5. Equipments of any of the vessels of France, in the " ports of the United States, which are doubtful in their nature " as being applicable to commerce or war, are deemed lawful.

" 6. Equipments of every kind, in the ports of the United " States, of privateers of the Powers at war with France are " deemed unlawful.

" 7. Equipments of vessels in the ports of the United " States, which are of a nature solely adapted to war, are deemed " unlawful; except those stranded or wrecked, as mentioned in " the eighteenth article of our treaty with France, the six- " teenth of our treaty with the United Netherlands, the eight- " eenth of our treaty with Prussia.

" 8. Vessels of either of the parties not armed, or armed " previous to their coming into the ports of the United States, " which shall not have infringed any of the foregoing rules, " may lawfully engage or enlist their own subjects or citizens, " not being inhabitants of the United States, except privateers " of the powers at war with France, and except those vessels " which shall have made prizes, &c."*

* American State Papers, i. 45.

This Circular Letter and the Rules enclosed suggest two remarks:—First, the directions respecting the merchandise which is allowed, and the equipment which is not allowed, are placed together in the letter. Secondly, the Rules may throw light on the meaning of the word equipments. Are "arming" and "equipping" synonymous terms? Three sorts of equipments are mentioned: equipment of vessels adapted solely for war; equipment of merchant vessels; equipment of vessels doubtful in their nature. The general word "equipping" covers the three. The restricted signification of arming might be applicable to the last, if it stood alone; but it is inapplicable to the first two. It follows, therefore, that the general word includes more than the restricted signification. We may carry the argument a step further. These Rules claim to be founded upon the usage of nations. Kent speaks of them as warranted by law and practice. They were drawn up with the following sentence of Vattel before the eyes of their framers, a sentence which had been quoted by Mr. Jefferson as their guide, and was one of the aphorisms to which M. Genet objected. "The im-"partiality which a neutral nation ought to observe amounts to "this,—To give no assistance where there is no obligation to "give it, nor voluntarily to furnish troops, arms, ammunition, or "anything of direct use in war."* Such then is the assistance forbidden by these Rules. Arming is but a part; the rest belongs to equipping, which therefore includes the furnishing the vessel with anything of direct use in war. And it must not be forgotten that Vattel classes the "materials for building ships of war" among things which "always belong to war."

These Rules were issued on the 4th of August, and on the 7th Mr. Jefferson communicated to M. Genet the final decision of the President:—

"I have it now in charge to inform you that the President "considers the United States as bound, pursuant to positive "assurances, given in conformity to the laws of neutrality, to "effectuate the restoration of, or to make compensation for, "prizes, which shall have been made of any of the parties at

* Vattel, b. 3, sec. 104; Kent's Commentaries, i. 122.

"war with France, subsequent to the 5th day of June last, by "privateers fitted out of our ports.

"That it is consequently expected, that you will cause res- "titution to be made of all prizes taken and brought into our "ports subsequent to the above-mentioned day by such pri- "vateers; in defect of which, the President considers it as "incumbent upon the United States to indemnify the owners "of those prizes, the indemnification to be reimbursed by the "French nation.

"That, besides taking efficacious measures to prevent the "future fitting out of privateers in the ports of the United "States, they will not give asylum therein to any which shall "have been at any time so fitted out, and will cause restitution "of all such prizes as shall be hereafter brought within their "ports by any of the said privateers.

"It would have been but proper respect to the authority of "the country, had that been consulted before these armaments "were undertaken. It would have been satisfactory, however, "if their sense of them, when declared, had been duly ac- "quiesced in. Reparation of the injury to which the United "States have been made so involuntarily instrumental, is all "which now remains, and in this your compliance cannot but "be expected."*

M. Genet replied that in his opinion the President had no more power to promise the indemnity than he himself had to consent to it, as in each Republic the appropriation of funds belonged to the Legislative Body. He could not, he said, withdraw the commissions of the privateers, but he would endeavour to persuade them to suspend their cruises and change their destination.

Mr. Jefferson wrote to Mr. Hammond on the same day, and again, in nearly the same words, on the 5th of September. I quote from the despatch of the later date, because it was subsequently appended to the Treaty of 1794, between the United States and England, under which a Mixed Commission was appointed for examining the claims made for the compensation thus offered.†

* American State Papers, i. 136. † Martens' Recueil, v. 640.

"We are bound by our Treaties with three of the belligerent "nations, by all the means in our power to protect and defend "their vessels and effects in our ports or waters, or on the seas "near our shores, and to recover and restore the same to the "right owners when taken from them. If all the means in "our power are used, and fail in their effect, we are not bound "by our treaties with those nations to make compensation.

"Though we have no similar Treaty with Great Britain, it "was the opinion of the President that we should use towards "that nation the same rule which, under this article, was to "govern us with the other nations; and even extend it to "captures made on the high seas and brought into our ports, "if done by vessels which had been armed within them.

"Having, for particular reasons, forborne to use all the means "in our power for the restitution of the three vessels mentioned "in my letter of August the 7th, the President thought it "incumbent on the United States to make compensation for "them; and though nothing was said in that letter of other "vessels taken under like circumstances, and brought in after "the 5th of June and before the date of that letter, yet, where "the same forbearance had taken place, it was his opinion that "compensation would be equally due.

"As to prizes made under the same circumstances, and "brought in after the date of that letter, the President deter- "mined that all the means in our power should be used for "their restitution. If these fail, as we shall not be bound by "our treaties to make compensation to the other Powers in "the analogous case, he did not mean to give an opinion that "it ought to be done to Great Britain. But still, if any cases "shall arise subsequent to that date, the circumstances of which "shall place them on similar ground with those before it, the "President would think compensation equally incumbent on "the United States.

"Hence, you will perceive, that the President contem- "plates restitution or compensation in the cases before the 7th of "August, and, after that date, restitution, if it can be effected by "any means in our power: and that it will be important that

"you should substantiate the fact, that such prizes are in our "ports or waters."*

The results of the correspondence with Mr. Hammond may be shortly stated. No compensation was proposed for prizes made on the high seas by privateers, and not brought into American ports. Restitution of prizes made on the high seas by the privateers, and brought into American ports before the 5th of June, was refused. Restitution of prizes taken in American waters by the privateers and brought into American ports was made throughout. Restitution, and in default of restitution, compensation was to be made in the cases of the prizes taken anywhere by the privateers and brought into American ports between the 5th of June and the 7th of August. Restitution, if possible, was to be made of prizes brought into American ports under similar circumstances after the 7th of August; but, as the rule, no compensation was proposed where restitution was found impossible.

M. Genet had, in his turn, complaints to make of English vessels. Some sailed from Charleston in the beginning of the war, before the Government heard of them. At Philadelphia, two escaped the watchfulness even of the French consul. The Governor of Maryland heard that a small vessel, "The Trusty," was buying guns at Baltimore, and gave orders to examine into the matter; "but she got off before the officer could get on "board, having cleared out three or four days before." Another was stopped. We are told the actual armaments were few.†

We need not linger over the other events of the summer. The French Vice-Consul at Boston attempted to resist, with an armed force, the execution of a warrant to seize a sespected vessel; but the attempt was put down. After the 7th of August, the privateers were effectually repressed. Those which returned were not allowed to go out again, and were dismantled. From this period the history of M. Genet's mission becomes chiefly personal. The American minister at

* American State Papers, i. 165.

† American State Papers, i. 112; ii. 174.

Paris was instructed in August to ask for his recall. His proceedings, as reported in his own despatches, had been disapproved of by his Government, and brought upon him severe censure; but five months elapsed before his successor arrived. He spent the interval in exciting the French consuls to oppose the orders of the American Government, in making violent harangues, in abuse of the President, and ostentatious contempt of his authority. Washington wished to have him sent away. At last, in December, his successor came, charged by a decree of the Committee of the Public Safety, formally to disavow the criminal conduct of M. Genet and his accomplices, and to ask for his arrest; to disarm all the privateers; and to remove the consuls. Washington now interposed on his behalf the sanctity of the American territory which he had so often violated, and would not allow him to be arrested. M. Genet felt himself safer in the hands of Washington, than in those of Robespierre. He became a citizen of the United States, and passed the rest of his life there.*

On the 3rd of December, Congress met. Washington laid before the two Houses his Proclamation, the Rules, and the correspondence with M. Genet. He explained in his address the course he had adopted, and added that Congress would probably find it expedient to extend the legal code, and the jurisdiction of the Courts of the United States, to many cases which, though dependent on principles already recognised, demanded some further provisions.†

Both Houses approved of the conduct of the President, and passed the Act thus suggested. Hamilton drew it up. We will omit the enlistment clauses, and pass on to those relating to equipments. By the third section, it was made a misdemeanour for any person, within any of the ports, harbours, bays, rivers, or other waters of the United States, to fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or knowingly to be concerned in the furnishing, fitting

* Marshall's Washington; Vie de Washington par de Witt; Vie de Jefferson par de Witt, Ap. 7.

† American State Papers, i. 39.

out, or arming of any ship or vessel, with intent that such ship or vessel should be employed in the service of any foreign prince or state, to cruise or commit hostilities upon the subjects, citizens, or property of another foreign prince or state, with whom the United States were at peace, or to issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel, to the intent that she might be employed as aforesaid. Every such ship or vessel, with her tackle, apparel, and furniture, together with all material, arms, ammunition, and stores, which might have been procured for the building and equipment thereof, was to be forfeited. And by the fourth section, it was made a misdemeanour, for any person within the territory or jurisdiction of the United States, to increase or augment, or procure to be increased or augmented, or to be knowingly concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, cruiser, or armed vessel, in the service of a foreign prince or state, or belonging to the subjects or citizens of such prince or state, the same being at war with another foreign prince or state with whom the United States were at peace, by adding to the number or size of the guns of such vessel prepared for use, or by the addition thereto of any equipments solely applicable to war.

Here ends the political part of these transactions. The power of granting commissions by French Consuls in America was revoked by the new French Minister; the consular jurisdiction was claimed, but not allowed; and enlistment and equipment were put an end to by the law. The shores of the United States were protected from being made stations of hostility. The sovereignty of the United States was vindicated. One short sentence of an American Minister expresses the principle of the law—the principle of all municipal legislation on the subject—"the Act of Congress has directed the mode of proceed-"ing to fulfil our neutral duties, agreeably to the universal law "of nations." No one, perhaps, ever entered upon a mission with such advantages as M. Genet. He had the most seductive offers

to hold out to the Americans; he appealed to their love of conquest, and their love of commerce; he had half the Cabinet on his side, and the sympathy of the most numerous and the loudest section of the nation. He threw away all his advantages. He impressed the President with a distrust of the French Republic that never left him; he supplied materials for bitter recriminations afterwards between his country and the United States; and he left behind him, as a lasting but unintentional record of his mission—a Foreign Enlistment Act.

The interpretation and application of the law were now handed over to the Courts of Law, and in the course of 1794 and 1795 many cases arising out of these transactions were brought before them, for the most part before the Admiralty Court at Charleston.

The French privateers brought their prizes into port, and the original owners instituted suits for restitution on the ground that the captures had been illegally made. Thus the general duties of neutrality, the modification of those duties in favour of France under the Treaty of Commerce, the Rules issued by the President, and the Act of Congress, all passed under the review of the Judges. The second and third of these questions were of temporary importance, and may be thrown out of consideration; the first and last need our attention.

In the beginning of 1795, the Vainqueur de la Bastille appeared again in a new character, and under a new name. Her early history illustrated what was an illegal outfit within American territory; her later history illustrated what was not an illegal outfit as not being within American territory. It will be remembered that she was originally fitted out and commissioned by M. Genet. She was in the list of vessels proscribed by the President under the Rules mentioned above; and in consequence was stripped and dismantled at Wilmington, in North Carolina, where she lay a considerable time. Afterwards she sailed from America, unarmed and as a foreign vessel. She was then equipped for war at Port-de-Paix, in the Island of Hayti, and commissioned by the French General in command there on the 23rd of August, 1794, and now brought a prize into

Charleston harbour. The Court decided that the dismantling, the change of property, and the cancelling of her register as an American vessel, withdrew her from question.*

The next case also illustrates what is not an equipment. The Port-de-Paix, a French vessel, captured on the high seas an English ship, the Brothers, and brought her into Charleston. The English Consul claimed the prize on the ground that the Port-de-Paix had been augmented in her warlike force in the port of Charleston before the capture. Her waist had been repaired, and two new ports cut in it.

The judgment of the Court was:—"This will not amount to "any additional equipment, nor can it be considered a breach "of neutrality. If a prosecution had been instituted under the "Act of the 5th of June, no forfeiture could have been adjudged "for so trifling an alteration."†

Another case must be mentioned, which occurred the following year, 1796. The privateer Alfred had been built at New York, to be used in case of hostilities, which at the time seemed impending, between the United States and England; she was sent to Charleston, and there sold to a French owner. The French owner took her to a French island, where she was thoroughly equipped, armed, and commissioned; she then sailed on a cruise and captured a prize, which she brought into Charleston. The Courts refused to restore the prize to its original owners. There can be no doubt of the justice of the decision: the original outfit was not within the purview of the law.‡

These are cases where restitution was not made. In the next case restitution was made. The French privateer Fonspertuis came into Charleston harbour unarmed. Leave to arm her was asked and refused. She afterwards left the harbour and returned with a prize, captured at the distance of two leagues from the bar of Charleston: at which time she had both cannon and swivels mounted. As she was unarmed

* *Williamson* v. *Brig Betsy*, Bee's Reports, p. 67.
† *Moodie* v. *Ship Brothers*, Bee's R. p. 76.
‡ *Moodie* v. *Ship Alfred*, 3 Dall, 307.

when she came in with her cargo, there was the "most violent presumption" that these guns had been taken in there.

The Court was of opinion that this was such an augmentation of force in the ports of the United States, as amounted to a breach of their neutrality and of the law of nations, and was a violation of the Act of Congress of June, 1794; and restitution of the prize and her cargo was decreed accordingly. *

The following case was decided on the 27th of April, 1795. A French armed ship, the Citizen of Marseilles, arrived at Philadelphia, and after leaving that port captured a British vessel, the Betsy Cathcart, on the high seas without the jurisdiction of the United States, and brought her to S. Carolina. The English Consul claimed restitution of the prize, on the ground that the force of the vessel had been augmented within the limits of the United States.

The judgment of the Court was as follows:—

"From a careful review of the evidence produced in this cause, "it appears clearly to me, that the ship Citizen of Marseilles, at "her arrival in Philadelphia, mounted only twelve guns, and had "others, but the precise number is not ascertained, in her hold: "that, at the time of her leaving the river, she had twenty-six or "twenty-eight mounted: that Captain Chabert having been re- "fused permission to open new ports in Philadelphia, and declar- "ing he did not wish to infringe the laws, and having afterwards "done so within the territories of the United States, could not "and does not plead ignorance as an excuse. Whatever he did "was with his eyes open, and, being forewarned, he must abide "the consequences.

"It remains now for me to inquire into the law arising from "the foregoing facts, and the power and duty of this Court "thereupon.

"There cannot be a doubt, if a prosecution was instituted "against Captain Chabert or any of the persons concerned in "increasing or augmenting, or procuring to be increased or aug- "mented the force of the vessel, under the Act of June last, but "that a conviction must follow. There a penalty of fine and

* Bee's R. p. 73.

" imprisonment is declared as a punishment for a breach of the " sovereignty and neutrality of the United States, and this by a " municipal law of our own: but what does the law of nations " require further? I have, in the course of the last summer, " declared my opinion so fully in this Court, that I need only now " repeat some part of the law then laid down. In the case of " *Janson* v. *Talbot* I stated that this Court, by the law of nations, " has jurisdiction over captures, made by foreign vessels of war, " of the vessels of any other nation with whom they are at war, " provided such vessels were equipped here, in breach of our " sovereignty and neutrality, and the prizes are brought *infra* " *præsidia* of this country. By the law of nations, no Foreign " Power, its subjects or citizens, has any right to erect castles, " enlist troops, or equip vessels of war in the territory or ports " of another. Such acts are breaches of neutrality, and may be " punished by seizing the persons and property of the offenders. " Vessels of war so equipped are illegal *ab origine*, and no prizes " they make will be legal as to the offended power, if brought " *infra præsidia*. The seizure and restoration of such prizes are " what the laws of neutrality justly claim. You must either " permit both parties to equip in your ports, or neither. Should " either equip without your consent, the least you can do is to " divest them of the prizes they may have thus illegally taken, " and return them to the other party, or else permit them to " equip also." *

We are not left to conjecture as to the results of a prosecution under the Act. Soon after, one Guinet was indicted for being knowingly concerned in furnishing, fitting out, and arming Les Jumeaux, in the port and river Delaware, with intent that she should be employed in the service of the French Republic to commit hostilities upon the subjects of Great Britain.

Les Jumeaux had arrived in Philadelphia with a cargo of coffee and sugar from the West Indies, and was the property of Le Maitre and seven other Frenchmen. Le Maitre desired to have her repaired, and her repairs were of a warlike character. She was seized, and Guinet was apprehended. The Judge on

* *Moodie* v. *Ship Cathcart*, Bee's R., 292.

the trial told the jury that the third section was meant to "include all cases of vessels armed within our ports by one of "the belligerent Powers to act as cruisers against another "belligerent Power in peace with the United States. Con- "verting a ship from her original destination, with intent to "commit hostilities, or, in other words, converting a merchant "ship into a vessel of war, must be deemed an original outfit; "for the Act would otherwise become nugatory and inoperative. "It is the conversion from the peaceable use to the warlike "purpose that constitutes the offence." He added, that, if the jury were of opinion that this was the intention, every man who was knowingly concerned in doing so, was guilty in the contemplation of the law. Guinet's defence was, that he was merely an interpreter between the French owner and the American workmen. The evidence proved that he was actively concerned in the equipment of the vessel, and the jury found him guilty.*

We now pass over several years. The next case occurred in June, 1810, though the final decision was not given till the month of March, 1815. The Spanish brig Alerta was captured by a French privateer of which the crew had been augmented in New Orleans, and was taken into New Orleans. The Spanish owners claimed and obtained restitution. A passage of the judgment deserves attention.

"The general rule is undeniable, that the trial of captures "made on the high seas, *jure belli*, by a duly commissioned "vessel of war, whether from an enemy or a neutral, belongs "exclusively to the Courts of that nation to which the captor "belongs. To this rule there are exceptions, as firmly esta- "blished as the rule itself. If the capture be made within the "territorial limits of a neutral country into which the prize is "brought, or by a privateer which had been illegally equipped "in such neutral country, the Prize Courts of such neutral "country not only possess the power, but it is their duty, to "restore the property so illegally captured to the owner. "This is necessary to the vindication of their own neutrality.

* Wharton's American State Trials, p. 93.

"All captures made by means of such equipments are "illegal in relation to such nation; and it is competent to her "Courts to punish the offenders; and, in case the prizes taken "by her are brought *infra præsidia*, to order them to be "restored.

"These principles are believed to be fully warranted by the "general law of nations, by the decisions of the Courts of this "country, and by the laws of the United States."

The Act of June, 1794, is then quoted, and the judgment proceeds:—

"Thus, if there were any doubt as to the rule of the law of "nations upon this subject, the illegality of equipping a foreign "vessel of war within the territory of the United States is "declared by the above law; and the power and duty of the "proper Courts of the United States to restore the prizes "made in violation of that law is clearly recognised."*

The next case has been referred to again and again in the discussions on this subject, and is known as the case of the Santissima Trinidad.† These are the facts. The Independencia was originally built and equipped in Baltimore as a privateer during the war between the United States and Great Britain. After the peace she was converted from a schooner to a brig and sold. In January, 1816, her new owners, inhabitants of Baltimore, put on board a cargo of munitions of war. She was then armed with twelve guns, part of her original armament, and sent out on a voyage ostensibly to the north-west coast of America, but in reality to Buenos Ayres; and the supercargo had written instructions to sell her to the Government of Buenos Ayres, if he could obtain a suitable price. She arrived at Buenos Ayres, sailing under the protection of the American flag, and "having exercised no acts of hostility." There she was sold. Soon afterwards she assumed the flag and character of a public ship, and was understood by the crew to have been sold to the Government of Buenos Ayres. The captain himself, who had brought her out, told the fact to the crew, and as-

* The Brig Alerta, 9 Cranch. 359. † 7 Wheaton's Reports, 283.

serted that he had become a citizen of Buenos Ayres, and had received a commission to command the vessel as a national ship, and invited the crew to enlist. The greater part enlisted. From that time her avowed character and reputation was that of a public ship of war, belonging to the Government of Buenos Ayres, which was then at war with Spain.

The following passages are extracted from the judgment:—

"The question as to the original illegal armament and outfit of "the Independencia may be dismissed in a few words. It is "apparent, that, though equipped as a vessel of war, she was "sent to Buenos Ayres on a commercial adventure, contra- "band indeed, but in no shape violating our laws or our "national neutrality. If captured by a Spanish ship of war "during the voyage, she would have been justly condemned "as good prize, and for being engaged in a traffic prohibited "by the law of nations. But there is nothing in our laws "or in the law of nations that forbids our citizens from send- "ing armed vessels, as well as munitions of war, to foreign "ports for sale. It is a commercial adventure which no "nation is bound to prohibit, and which only exposes the "persons engaged in it to the penalty of confiscation. Sup- "posing, therefore, the voyage to have been for commercial "purposes, and the sale at Buenos Ayres to have been a bonâ "fide sale (and there is nothing in the evidence before us to "contradict it), there is no pretence to say that the original "outfit on the voyage was illegal, or that a capture made after "the sale was, for that cause alone, invalid."

Up to this point we have a commercial adventure. We come next to the events which brought her under the cognizance of the Supreme Court of the United States. She sailed from Buenos Ayres on a cruise against Spain, and, after visiting the coast of Spain, put into Baltimore. She was received as a public ship, and underwent considerable repairs. For this purpose her guns were taken out and replaced without any addition to her armament. During her stay in Baltimore, about thirty sailors were enlisted.

She then went out on a cruise, in which the property in dispute was captured. The judgment thus continued :—

"The Court is therefore driven to the conclusion that there "was an illegal augmentation of the force of the Indepen- "dencia in our ports, by a substantial increase of her crew; "and this renders it wholly unnecessary to enter into an in- "vestigation of the question, whether there was not also an "illegal increase of her armament."

Nor was this all. A privateer had been sold under an order of the Court of Virginia, together with the armaments and munitions of war on board. She was purchased by an ostensible buyer, but immediately transferred to the captain of the Independencia. She went to Baltimore, and was called the Atravida, and attached to the Independencia as a tender. Part of her armament was mounted, and a crew of about twenty-five men put on board at Baltimore. This was on the evidence of the captain. Upon this part of the case the Court said :—

"Here, then, is complete evidence of an illegal outfit of the "Atravida, and an enlistment of her crew within our waters "for the purposes of war. The Atravida must be considered "as attached to, and constituting a part of the force of, the "Independencia; and so far as the warlike means of the latter "were increased by the purchase, her military force must be "deemed to be augmented.

"And here we are met by an argument that the augmenta- "tion of the force of the Independencia within our ports is not "an infraction of the law of nations, or a violation of our neu- "trality; and that, so far as it stands prohibited by our muni- "cipal laws, the penalties are personal, and do not reach the "case of restitution of captures made in the cruise during which "such augmentation has taken place. It has never been held "by this Court, that an augmentation of force or illegal outfit "affected any captures made after the original cruise was ter- "minated. By analogy to other cases of violations of public "law, the offence may well be deemed to be deposited at the "termination of the voyage, and not to affect future transactions.

" But as to captures made during the same cruise, the doctrine " of this Court has long established that such illegal augmenta- " tion is a violation of the law of nations, as well as of our own " municipal laws; and as a violation of our neutrality, by " analogy to other cases, it infects the captures subsequently " made with the character of torts, and justifies and requires a " restitution to the parties who have been injured by such mis- " conduct. It does not lie in the mouth of wrongdoers to set " up a title derived from a violation of our neutrality."

This case grew out of the South American war of independence. The revolutions of South America naturally raised several questions relating to the obligations of the United States as a neutral Power. The sympathy of their people was on the side of the revolted colonies, and attempts to assist them by enlistment and privateering were set on foot. The New States were still unrecoguised, and there was a doubt whether the Act of 1794 referred to unrecognised States, or was confined to those that were recognised. To meet the difficulty, the law was amended by the Act of the 20th of April, 1818, which forms the present law of the United States. To the words "prince or state" in the old Act were added "colony, district, or people" in the new Act. But, as regards the general principle, the decisions under the former Act illustrate equally the latter. It will be useful to quote the two sections relating to equipments, for the purpose of comparison with our own law.

" Sect. 3. And be it further enacted, That if any person shall, " within the limits of the United States, fit out and arm, or " attempt to fit out and arm, or procure to be fitted out and " armed, or shall knowingly be concerned in the furnishing, " fitting out, or arming of any ship or vessel, with intent that " such ship or vessel shall be employed in the service of any " foreign prince or state, or of any colony, district, or people, to " cruise or commit hostilities against the subjects, citizens, or " property of any foreign prince or state, or of any colony, " district, or people with whom the United States are at peace, " or shall issue or deliver a commission within the territory or

" jurisdiction of the United States for any ship or vessel, to the " intent that she may be employed as aforesaid, every person " so offending shall be guilty of a high misdemeanor, and " shall be fined not more than ten thousand dollars, and im- " prisoned not more than three years: and every such ship, " with her tackle, apparel, and furniture, together with all " materials, arms, ammunition, and stores which may have been " procured for the building and equipment thereof, shall be " forfeited—one-half to the use of the informer, and the other " half to the use of the United States."

" Sect. 5. And be it further enacted, That if any persons " shall, within the territory or jurisdiction of the United States, " increase or augment, or procure to be increased or augmented, " or shall knowingly be concerned in increasing or augmenting, " the force of any ship of war, cruiser, or other armed vessel, " which, at the time of her arrival within the United States, " was a ship of war, or cruiser, or armed vessel in the service " of any foreign prince or state, or of any colony, district, or " people, or belonging to the subjects or citizens of any such " prince or state, colony, district, or people, the same being at " war with any foreign prince or state, or of any colony, dis- " trict, or people with whom the United States are at peace, by " adding to the number of the guns of such vessel, or by " changing them on board of her for guns of a larger calibre, " or by the addition thereto of any equipment solely applicable " to war, every person so offending shall be deemed guilty of a " high misdemeanor, and shall be fined not more than one " thousand dollars, and be imprisoned not more than one year."

The unsettled condition of Buenos Ayres gave rise to another case, decided in 1821. The Irresistible was built at Baltimore in 1817, and was constructed for purposes of war. In the spring of 1818, she was manned by a crew of about fifty men, and cleared out for Teneriffe, having in her hold twelve eighteen-pounders with their carriages, small arms, and ammunition, entered outwards as cargo. She went to Buenos Ayres, where she remained for some weeks, during which time her crew was discharged. Her owner then obtained

a commission from the Oriental Republic, which was at war with Portugal; most of the crew were re-enlisted, and the vessel sailed on a cruise. She captured several Portuguese vessels. In September, 1848, she returned to Baltimore, and a large sum of money, taken from the captured vessels, was deposited by her owner in the bank there. The Consul General of Portugal now claimed the restitution of the money to the persons from whom it had been taken, on the ground of the original illegal outfit of the Irresistible.

On behalf of the owner of the Irresistible, it was argued that she was simply an article of contraband; and that though she might be subject to confiscation, if taken on her voyage to the belligerent country, yet, when once incorporated into the navy of that country, she must be considered by neutrals in the same light as the rest of the navy. It was also argued, that, as she had committed no act of hostility on her outward voyage, the illegality of her origin was purged by the termination of her voyage. The Court, however, decreed restitution.

Chief Justice Marshall, in his judgment, said:—

"The principle is now firmly settled, that prizes, made by "vessels which have violated the Acts of Congress that have "been enacted for the preservation of the neutrality of the "United States, if brought within their territory, shall be "restored. The only question therefore is, does this case come "within the principle?

"That the Irresistible was purchased, and that she sailed out "of the port of Baltimore, armed and manned as a vessel of "war, for the purpose of being employed as a cruiser against a "nation with whom the United States were at peace, is too "clear for controversy. That the arms and ammunition were "cleared out as cargo cannot vary the case. Nor is it thought "to be material that the men were enlisted in form as for a "mercantile voyage. There is nothing resembling a commercial "adventure in any part of the transaction. The vessel was "constructed for war, and not for commerce. There was no "cargo on board but what was adapted to the purposes of war. "The crew was too numerous for a merchantman, and was

" sufficient for a privateer. These circumstances demonstrate " the intent with which the Irresistible sailed out of the port " of Baltimore.

" But she was not commissioned as a privateer, nor did she " attempt to act as one, until she reached the River La Plata, " when a commission was obtained, and the crew re-enlisted. " This Court has never decided that the offence adheres to the " vessel, whatever changes may have taken place, and cannot " be deposited at the termination of the cruise in preparing for " which it was committed; and as the Irresistible made no " prize on her passage from Baltimore to the River La Plata, it " is contended that her offence was deposited there, and that " the Court cannot connect her subsequent cruise with the " transactions at Baltimore.

" If this were to be admitted in such a case as this, the laws " for the preservation of our neutrality would be completely " evaded, so far as this enforcement depends on the restitution " of prizes made in violation of them. Vessels completely fitted " in our ports for military operations, need only sail to a " belligerent port, and there, after obtaining a commission, go " through the ceremony of discharging and re-enlisting their " crew, to become perfectly legitimate cruisers, purified from " every taint contracted at the place where all their real force " and capacity of annoyance was acquired. This would, in- " deed, be a fraudulent neutrality, disgraceful to our own " Government, and of which no nation would be the dupe. " It is impossible for a moment to disguise the facts, that " the arms and ammunition taken on board the Irresistible " at Baltimore, were taken for the purpose of being used " as a cruiser, and that the men there enlisted, though " engaged, in form, as for a commercial voyage, were not " so engaged in fact. There was no commercial voyage, and " no individual of the crew could believe that there was one. " Although there might be no express stipulation to serve " on board the Irresistible after her reaching the La Plata and " obtaining a commission, it must be completely understood " that such was to be the fact. For what other purpose could

"they have undertaken this voyage. Every thing they said, "every thing that was done, spoke a language too plain to be "misunderstood.

"It is therefore clear that the Irresistible was armed and "manned in Baltimore, in violation of the laws and of the "neutral obligations of the United States. We do not think "that any circumstances took place in the River La Plata, by "force of which the taint was removed."*

One more case, furnished also by Buenos Ayres, and decided by the Supreme Court in 1832, will close our list. The defendant in this case was indicted under the third section of the Act, for being knowingly concerned in the fitting out of the Bolivar, a privateer, with intent that she should be employed in the service of the United Provinces of Rio de la Plata against Brazil. The judges of the Circuit Court were divided in opinion, and the case came before the Supreme Court for directions as to the proper ruling in law to be given to the jury.

The Bolivar sailed from Baltimore for St. Thomas on the 22nd of Sept., 1827, having on board provisions, water casks, one gun carriage and slide, a box of muskets, and thirteen kegs of powder. A bond had been given by her owners not to commit hostilities against any State with which the United States were at peace. At St. Thomas, she was fitted out as a privateer; the defendant became her captain, and she sailed to St. Eustatia. One of the owners was on board from the time of her leaving Baltimore. In Baltimore he had said that it was his intention, or rather his wish, to employ the Bolivar as a privateer, but that he had no funds to fit her out, and could not tell, until he reached the West Indies, what he might ultimately do. On the voyage from Baltimore, he said, that, if the vessel went privateering, she would sail under the flag of Buenos Ayres, and that he had obtained a commission from the agent of the Government of Rio de la Plata at Washington. The owner had no funds at St. Thomas, and it was not till after negotiations of two or three days that he was able to procure any. The privateer sailed from St. Eustatia under the flag of

* The Gran Para, 7 Wheaton's R. p. 471.

Buenos Ayres, and captured several vessels, which were sent to the West Indies, in pursuance of the orders of the Government of Buenos Ayres, because of the blockade of the Rio de la Plata.

On the part of the defendant it was contended, that the vessel must be fitted out and armed within the United States, if not completely, so far at least as to be prepared for war, or in a condition to commit hostilities.

The Court said:—"We do not think this is the true con-"struction of the Act. It has been argued that the Act "evidently contemplates two distinct classes of offenders: the "principal actors who are directly engaged in preparing the "vessel; and another class, who, though not the chief actors, "are in some way concerned in the preparation.

"The Act in this respect may not be drawn with very great "perspicuity; but should the view taken of it by the defen-"dant's counsel be deemed correct (which, however, we do not "admit), it is not perceived how it can affect the present case. "For the indictment, according to this construction, places the "defendant in the secondary class of offenders. He is only "charged with being knowingly concerned in the fitting out "of the vessel, with intent that she should be employed, &c. "To bring him within the words of the Act, it is not necessary "to charge him with being concerned in fitttting out *and* arming. "The words of the Act are fitting out *or* arming. Either will "constitute the offence. But it is said such fitting out must "be of a vessel armed, and in a condition to commit hostilities, "otherwise the minor actor may be guilty when the greater "would not. For, as to the latter, there must be a fitting out "*and* arming in order to bring him within the law. If this "construction of the Act be well founded, the indictment ought "to charge that the defendant was concerned in fitting out the "Bolivar, *being a vessel fitted out and armed, &c.* But this, we "apprehend, is not required. It would be going beyond the "plain meaning of the words used in defining the offence. It "is sufficient if the indictment charges the offence in the words "of the Act; and it cannot be necessary to prove what is not "charged. It is true, that with respect to those who have been

" denominated at the bar the chief actors, the law would seem " to make it necessary that they should be charged with fitting " out *and* arming. These words may require that both should " concur, and the vessel be put in a condition to commit hos- " tilities, in order to bring her within the law. But an " attempt to fit out and arm is made an offence. This is " certainly doing something short of a complete fitting out and " arming. To attempt to do an act does not, either in law " or in common parlance, imply a completion of the act, or a " definite progress towards it. Any effort or endeavour to effect " it will satisfy the terms of the law. This varied phraseology " in the law was probably employed with a view to embrace " all persons of every description who might be engaged, " directly or indirectly, in preparing vessels with intent that " they should be employed in committing hostilities against any " powers with whom the United States were at peace.

" We are accordingly of opinion, that it is not necessary that " the jury should believe or find that the Bolivar, when she " left Baltimore, and when she arrived at St. Thomas, and " during the voyage from Baltimore to St. Thomas, was armed " in a condition to commit hostilities, in order to find the " defendant guilty of the offence charged in the indictment."

It was also contended on the part of the defendant, that the jury ought to be directed as follows:—

" That if the jury believe, that, when the Bolivar was fitted " out and equipped at Baltimore, the owner and equipper in- " tended to go to the West Indies in search of funds with " which to arm and equip the said vessel, and had *no present* " *intention* of using or employing the said vessel as a privateer, " but intended, when he equipped her, to go to the West Indies, " to endeavour to raise funds to prepare her for a cruise, then " the defendant is not guilty.

" Or, if the jury believe, that when the Bolivar was " equipped at Baltimore, and when she left the United States, " the equipper *had no fixed intention to employ* her as a pri- " vateer, but had a wish so to employ her, the fulfilment of " which wish depended on his ability to obtain funds in the

" West Indies, for the purpose of arming and preparing her " for war, then the defendant is not guilty."

The Court said:—" We think these instructions ought to be " given. The offence consists principally in the intention with " which the preparations were made. These preparations, ac- " cording to the very terms of the Act, must be made within the " limits of the United States; and it is equally necessary that the " intention with respect to the employment should be formed " before she leaves the United States. And this must be a fixed " intention, not conditional or contingent, depending on some " future arrangements. This intention is a question belonging " exclusively to the jury to decide. It is the material point " on which the legality or criminality of the act must turn; " and decides whether the adventure is of a commercial or " warlike nature.

" The law does not prohibit armed vessels belonging to " citizens from sailing out of our ports; it only requires the " owners to give security (as was done in the present case) that " such vessels shall not be employed by them to commit hos- " tilities against foreign Powers at peace with the United " States.

" The collectors are not authorised to detain vessels, although " manifestly built for warlike purposes, and about to depart " from the United States, unless circumstances shall render it " probable that such vessels are intended to be employed by the " owners to commit hostilities against some foreign Power at " peace with the United States.

" All the latitude therefore necessary for commercial pur- " poses is given to our citizens; and they are restrained only " from such acts as are calculated to involve the country in " war."

Tha Court added:—" If the jury shall find that the de- " fendant was knowingly concerned in fitting out the Bolivar " within the United States, with the intent that she should be " employed as set forth in the indictment, that intention being " defeated by what might afterwards take place in the West " Indies would not purge the offence which was previously

"consummated. It is not necessary that the design or inten-
"tion should be carried into execution in order to constitute
"the offence." *

Two subsequent diplomatic transactions will illustrate the application of the law by the Executive Government. The German Empire of 1848, during the war with Denmark, purchased and fitted out a war steamer in New York for the Federal navy, which it was proposed in Germany to create. There was no concealment in the matter. The German Minister at Washington even asked the Government to allow an officer of their navy to assist in the choice of a vessel. The Danish Minister objected that her equipment was a violation of the law. The German Minister argued that she had been ordered independently of the war for defensive purposes during an armistice with Denmark; that there was therefore no proximate intent to commit hostilities against a nation at peace with the United States, and that she would probably reach Germany without meeting an enemy: but he would not say what orders she might receive when there, for they must depend upon contingencies that did not exist, and could not be foreseen. The American Government, under the advice of their Attorney-General, answered that the case came within the prohibition of the law: First, because a state of war still existed, and did exist during the fitting out of the vessel, between Denmark and the German Empire; Secondly, because the vessel was fitted out and armed as a vessel of the German Government, and was calculated to commit hostilities against Denmark; Thirdly, because a ship so armed and fitted, when upon the high seas, in a state of war, would be false to her flag and honour if she did not commit hostilities upon an enemy whenever and wherever found; and therefore the intent of her employment, as far as her enemy was involved, could not be peaceful, but must be warlike, and whether the meeting was accidental or designed, the conflict was intentional. It was not the object of the Act of 1818 to distinguish between a proximate or immediate intent, and any other intent, in the use of the word "intent" in the

* *United States* v. *Quincy*, 6 Peters, 441.

third section: any intent, direct or contingent, to cruise and commit hostilities with the vessel fitted out against a nation with which the nation fitting her out was then at war, was within the Act. "The design," it is said in the opinion of the Attorney-General, "to cruise is not disowned. The war-"like purpose of the vessel is not disclaimed; but because "there is no actual present intent to cruise, &c., and because "she may reach the place of her first destination without "meeting an enemy, and peace may be restored before she "receives orders to cruise, the intent of her equipment is "innocent. Such is not the meaning of the law." A long correspondence followed. At last she was allowed to sail, on a bond being given, in compliance with the Act of 1818, that she should not be employed against any nation with which the United States were at peace. The German Government then asked whether the bond applied only to the voyage from America to Germany; or if it was intended that she was not to commit hostilities even after being regularly rated as a German man-of-war. The answer of the American Government was, that the obligation under which she sailed from the United States could not be considered as discharged before peace had been established, and that an armistice was not peace.*

The second transaction was the seizure of the Maury, in 1855, during the Crimean war, by the Government on the information of Mr. Crampton, the English Minister, that he had reason to believe that she was being fitted out for the Russian service, and that other vessels were in progress, intended to intercept the mails between Liverpool and Boston. The Maury had on board at the time fourteen guns, muskets, side-arms, ammunition, and timber. As this case is constantly referred to, I will quote at length the Report written on the 22nd of October, 1855, by the Attorney-General to Mr. Marcy, the Secretary of State, which contains a full account of the transaction.

* Wheaton's International Law, p. 35, n. edit. 1863; Cong. Doc. 31st. Cong. 1 Sess. H. of R. Ex. Doc. No. 5; Opinions of Attorneys-General, v. p. 92.

" In consequence of the British Minister's communication to " you of the 11th instant, and which you referred to me on " the day of its receipt (12th), brief instructions were on the " same day despatched by telegraph to Mr. M'Keon, Attorney " of the United States for the Southern district of New York, " and more detailed instructions by mail the next day, request- " ing him to make immediate enquiry on the subject of the " Maury, to consult thereon with Mr. Barclay, the British " Consul at New York, and, if sufficient probable cause appeared, " to institute the proper process against her in the District Court.

" These instructions were induced by the documents com- " municated by the British Minister, copies of which were " transmitted by me to Mr. M'Keon.

" The documents consisted of—

" 1st. An affidavit by Mr. Barclay, setting forth that he " believed, and expected to be able to prove, that the Maury was " built, fitted out, and armed with intent to be employed by " the Russian Government to cruise against the subjects of " Great Britian, and that he stood ready to bring forward his " proof thereof.

" 2nd. The affidavit of one Cornell, purporting to be a police " officer in New York, who professes to describe the build, " equipment, armament, and cargo of the Maury, and concludes " with expressions of belief that she was built, armed, and " equipped by the Russian Government for war purposes against " Great Britain.

" 3rd. The affidavit of one Craft, also purporting to be a " police officer in New York, who speaks more generally, briefly " describes the visible armament of the Maury, repeats hearsay " as to the freight, and expresses belief that she is a vessel of " war.

" 4th. Finally, the affidavit of Mr. Edwards, a counsellor at " law in New York, understood to be counsel for the British " Consul, who says that he verily believes that the Maury was " built, equipped, and loaded by and for the Russian Govern- " ment, to be used in the present war against the vessels and " subjects of Great Britain.

"Mr. Edwards then proceeds to state, that a person who he "believes has been in the pay of the Russian Government, "gave him a full explanation of the armament and destination "of the Maury. He (Mr. Edwards) gathered from the person "referred to 'that the plan of the Maury was to attack and "capture one of the Cunard British Mail Steamers, arm the "prize, and, after being joined by other vessels of the same "construction, built and fitted out by the Russian Government, "to proceed to attack the British possessions in the East "Indies.'"

"The representations concerning the Maury which Mr. "Edwards thus adopted were grossly improbable on their face, "and had so much the air of a contrivance to impose on him "and, through him, on the British Consul, as to produce some "hesitation in my mind as to the propriety of instituting "process in the case; but the specific and positive statement of "Cornell and Craft, especially the former, as to the build, "rig, armament, and imputed contents of the vessel, seemed "to me, on the whole, to justify and require an examination "of the case at the hazard of possible inconvenience to innocent "parties.

"To make such examination it was necessary to libel the "Maury, and place her in charge of the marshal.

"I have now received from Mr. M'Keon a report of the result "of his investigations.

"It appears that the Maury was owned in part by Messrs. "Low & Brothers, who have afforded satisfactory information "as to her construction, character, and destination.

"They made affidavit that she was built and equipped for "trade with China, having, in addition to the ordinary arma- "ment of vessels in that business, only two deck-guns, deemed "requisite on account of the increase of piracy in the seas of "China.

"It further appears by their explanations, that the state- "ments made as to the guns and munitions of war, and extra "spars, on board the Maury were inaccurate, to use the mildest "admissible expression; that the surmises as to the illegality

" of her character are not substantiated by proof; and that she " is, in fact, advertised for general affreightment and receiving " cargo destined for Shanghae.

" Neither Mr. Barclay nor Mr. Edwards brought forward any " evidence to contradict these facts; on the contrary, Mr. " Edwards has, in a letter addressed to Mr. Walker, expressed " his conviction of the propriety of dismissing the libel; which " is also recommended unreservedly by Mr. Walker.

" Under these circumstances, it affords me pleasure to enable " you to give assurance that the Cunard Mail Steamers may " continue to enter and to leave our ports, without apprehen- " sion of being captured by the Maury, and converted into " Russian men-of-war for the prosecution of hostilities in the " East Indies."

The English Consul then withdrew the complaint.*

We have now arrived at the end of our review of the American law. It would not be just to leave the subject without adding as the conclusion, that, during the seventy years which have elapsed since the summer of 1793, the Courts of the United States, and successive administrations of Government, have endeavoured to carry out in good faith the policy then inaugurated by Washington.

The history of our own Foreign Enlistment Act may be told in a few sentences. There were, before 1819, two Statutes prohibiting enlistments in the service of Foreign States, but they did not apply to enlistment in the service of unrecognised States; and the revolted colonies of Spain in South America were at the time still unrecognised. We had engaged ourselves by treaty with Spain in 1814, in the earlier stage of the revolution, not to furnish arms or warlike articles to the insurgents.† But the revolution, as it went on, excited the strongest sympathy in England. The struggle offered an opening to the soldiers and sailors who were disbanded at the Peace of 1815. They were enlisted openly; the soldiers were openly formed into regiments and embarked in ships of war

* Senate Documents, 1st and 2nd Sess. 34th Cong., 238.
† Martens' Recueil, xii. 122.

for South America. Nearly ten thousand joined the insurgents. The administration of Lord Liverpool introduced the present Act with the view of extending the law to the case before them, and of fulfilling the obligations of England to Spain. The Act prohibits assistance to all parties alike in a war. But the circumstances of the moment gave it an unneutral appearance. Besides, the Attorney-General brought in the Bill as a simple amendment of the law, while Lord Castlereagh defended the Bill on the ground of our Treaty with Spain. Sir James Mackintosh accused the Government of shifting their position. The title of the Bill, he said, should have been "A Bill for preventing British subjects from "lending their assistance to the South American cause." The debate turned almost entirely upon the history of the earlier Statutes, and the prosperity of the South American States. But we must not forget to add, that Lord Stowell, then Sir W. Scott, supported the measure as carrying out a strict neutrality.

The seventh and eighth sections refer to equipments, and are the only sections which it is necessary to quote.

"VII. And be it further enacted, That if any person, within "any part of the United Kingdom, or in any part of His "Majesty's dominions beyond the seas, shall, without the "leave and licence of His Majesty for that purpose first had "and obtained as aforesaid, equip, furnish, fit out, or arm, or "attempt or endeavour to equip, furnish, fit out, or arm, or "procure to be equipped, furnished, fitted out, or armed, or "shall knowingly aid, assist, or be concerned in the equipping, "furnishing, fitting out, or arming of any ship or vessel, with "intent or in order that such ship or vessel shall be employed "in the service of any foreign prince, state, or potentate, or "of any foreign colony, province, or part of any province or "people, or of any person or persons exercising or assuming to "exercise any powers of government in or over any foreign "state, colony, province, or part of any province or people, as "a transport or store ship, or with intent to cruise or commit "hostilities against any prince, state, or potentate, or against "the subjects or citizens of any prince, state, or potentate, or

" against the persons exercising or assuming to exercise the " powers of government in any colony, province, or part of " any province or country, or against the inhabitants of any " foreign colony, province, or part of any province or country, " with whom His Majesty shall not then be at war; or shall, " within the United Kingdom, or any of His Majesty's do- " minions, or in any settlement, colony, territory, island, or " place belonging or subject to His Majesty, issue or deliver " any commission for any ship or vessel, to the intent that " such ship or vessel shall be employed as aforesaid, every " such person so offending shall be deemed guilty of a mis- " demeanor, and shall, upon conviction thereof, upon any " information or indictment, be punished by fine and im- " prisonment, or either of them, at the discretion of the Court " in which such offender shall be convicted; and every such " ship or vessel, with the tackle, apparel, and furniture, toge- " ther with all the materials, arms, ammunition, and stores, " which may belong to or be on board of any such ship or " vessel, shall be forfeited; and it shall be lawful for any " officer of His Majesty's customs or excise, or any officer of " His Majesty's navy, who is by law empowered to make " seizures for any forfeiture incurred under any of the laws " of customs or excise, or the laws of trade and navigation, " to seize such ships and vessels aforesaid, and in such places " and in such manner in which the officers of His Majesty's " customs or excise and the officers of His Majesty's navy " are empowered respectively to make seizures under the laws " of customs and excise, or under the laws of trade and navi- " gation; and that every such ship and vessel, with the tackle, " apparel, and furniture, together with all the materials, arms, " ammunition, and stores which may belong to or be on board of " such ship or vessel, may be prosecuted and condemned in the " like manner, and in such Courts as ships or vessels may be " prosecuted and condemned for any breach of the laws made " for the protection of the revenues of customs and excise, or " of the laws of trade and navigation.

" VIII. And be it further enacted, That if any person in

"any part of the United Kingdom of Great Britain and "Ireland, or in any part of His Majesty's dominions beyond the "seas, without the leave and licence of His Majesty for that "purpose first had and obtained as aforesaid, shall, by adding to "the number of the guns of such vessel, or by changing those "on board for other guns, or by the addition of any equipment "for war, increase or augment, or procure to be increased or "augmented, or shall be knowingly concerned in increasing or "augmenting the warlike force of any ship or vessel of war, or "cruiser, or other armed vessel, which at the time of her arrival "in any part of the United Kingdom, or any of His Majesty's "dominions, was a ship of war, cruiser, or armed vessel in the "service of any foreign prince, state, or potentate, or of any "person or persons exercising or assuming to exercise any "powers of government in or over any colony, province, or part "of any province or people belonging to the subjects of any "such prince, state, or potentate, or to the inhabitants of "any colony, province, or part of any province or country "under the control of any person or persons so exercising or "assuming to exercise the powers of government, every such "person so offending shall be deemed guilty of a misdemeanor, "and shall, upon being convicted thereof, upon any informa-"tion or indictment, be punished by fine and imprisonment, or "either of them, at the discretion of the Court before which "such offender shall be convicted."

In 1823, Lord Althorp moved for the repeal of the Act, and it was on that occasion Mr. Canning used the words referred to before:—"If I wished for a guide in the system of neutrality, "I should take that laid down by America in the days of the "Presidency of Washington, and the Secretaryship of Jefferson. "The American Government held, that the fitting out of French "ships in American ports for the purpose of cruising against "English vessels, was incompatible with the sovereignty of the "United States, and tended to interrupt the peace and good "understanding which subsisted between that country and Great "Britain. Here, I contend, is the principle of neutrality upon "which we ought to act. It was upon this principle that the

"Bill in question was enacted." He mentioned the Act again in a speech on the Alien Act, in 1824, made when the contest between Ferdinand the Seventh of Spain and the South American Republics was the leading topic of political interest. He said, that the Foreign Enlistment Act alone prevented the fitting out of armaments in our ports: if the Crown were stripped of the powers given by it, there was no physical impediment to any number of foreigners, whether beaten or triumphant, coming to Plymouth or Portsmouth, fitting out an armament there, and sailing with it for the conquest of South America, whether for Ferdinand or his enemies. There was scarcely a Power which did not look to the capitalists of this country for resources, and the money-lender would lend wherever he got a security. He should be sorry, therefore, to trust the neutrality of the country to the morality of money-lenders; for, get rid of the Foreign Enlistment Act, and let Ferdinand once show a little strength, and we should soon see him aided by the capitalists of this country, and an expedition sail from our ports making another attempt to crush the rising liberties of South America. He wished to retain the law, to prevent this result.

These remarks throw, perhaps, but little light on the technical difficulties of the Statute; but they are valuable as showing that Mr. Canning felt how easily a commercial transaction passes into one of what he happily calls "those little flirtations that "might tend to the violation of a strict neutrality."*

There is again an exposition of the Act by Mr. Canning in a despatch written to Turkey. The Sultan's Ministers complained repeatedly of the Englishmen who had joined the Greek army, and of the supplies sent out from England to Greece. The despatch was in answer to those complaints. It is, I believe, unpublished, and the only passage we have is one quoted by Mr. Huskisson, in the debate of the 28th of April, 1830, on the Terceira Expedition. Mr. Huskisson does not give the date, but, from the mention of steam vessels and yachts, it is probable that the despatch was written in 1826; for there was a steam vessel at that time built at Liverpool, intended, as was said,

* Canning's Speeches, v. 264.

for the Greeks; and in the summer of that year, Lord Cochrane went out to take command of the Greek fleet in a yacht bought with funds raised here for the Greek cause. Mr. Huskisson said: —"To the remonstrances of Turkey Mr. Canning replied, 'Arms "may leave this country as matter of merchandise; and how- "ever strong the general inconvenience, the law cannot interfere "to stop them. It is only when the elements of armaments are "combined that they come within the purview of the law; and "if that combination does not take place till they have left this "country, we cannot interfere with them.' These were the words "of Mr. Canning, who extended the doctrine to steam vessels and "yachts that might afterwards be converted into vessels of war."*

During the thirty years between the date of this speech and the present American war, the equipment clauses of the Act have been almost unnoticed. The Alabama recalled attention to them. As her case did not come before the Courts, it may be dismissed in a few words. She sailed from Liverpool on the 25th of July, the day before the order came from the Government to detain her. The order had been delayed from circumstances beyond the power of human control, and she thus escaped a legal investigation.† She left Liverpool without a captain, without a commission, without guns, powder, or ammunition, sailing under English colours. Two vessels, one from London and the other from Liverpool, with guns, ammunition, and coals, met her at Angra Bay in the Azores. She took these supplies on board, partly in the Bay and partly outside, as best she could, being ordered out by the authorities of the place. Captain Semmes joined her there, and told the crew he had to steal out of Liverpool like a thief. The Confederate flag was hoisted, and the men who chose to join her signed articles in Malfre Bay.‡ However much we may regret her departure while a doubt of the legality of her equipment existed, and however irritating her subsequent acts may be, and naturally must be, under the circumstances, to the people of the United States, those subsequent acts cannot throw any light back to guide our decision as to her character at the

* Hansard, vol. xxiv. N.S. p. 209.

† Wheaton's International Law, p. 755, Note. (1863.)

‡ North American Papers, No. 3, (1863), p. 10.

time of departure. Assuming such an intent on the part of her builders as is required by the Statute, the decision as to her character depends upon the meaning of the words, "to equip, "furnish, fit out, or arm" in the seventh section of the Statute.

Both these points, however, as to the intent and the equipment meant by the Statute, are now waiting a decision in the case of the Alexandra. At the trial last June, she was described in the evidence as strongly built, certainly not for mercantile purposes; as suitable for a yacht, and easily convertible for the purposes of war; and as having accommodation for men and officers, such as would be required in war. It was also said, that her bulwarks were stronger and lower than the bulwarks of a merchant ship. There were no guns on board; and she was seized before she was finished.

Upon this evidence the jury returned a verdict for the defendant. The case is now under the consideration of the Court of Exchequer.

A guide is bound to give notice when the path becomes uncertain. Here we part company with history and legal decisions. They are the materials for forming an opinion on the subject before us, and I have endeavoured to make the collection of them in the preceding pages as useful as possible for that purpose. The following pages contain the conclusions to which I have been led by those materials. I offer them as suggestions for the explanation of the law, from a conviction of the importance of the questions at issue, leaving my readers to judge of their value.

I venture to think, that if a vessel of war is proved to be in course of construction knowingly for a belligerent at war with a State with which England is at peace, every timber and every plate of iron in her becomes part of an illegal equipment.

The grammatical construction of the seventh section of the Act presents some difficulty. Whatever interpretation be adopted, the section is awkwardly worded. Put in its simple form it stands thus: "To equip any vessel with intent or in order that "such vessel shall be employed in the service of any Foreign "State as a transport or store ship or with intent to cruise or "commit hostilities against any State with which His Majesty

" shall not then be at war." Now those who interpret the Statute as applying only to privateering, and consider that the person who equips the vessel must be the same as the person who employs the vessel, argue that the words " with intent" point out the two co-ordinate clauses of the sentence. The words " against any State with which His Majesty shall not be at " war," will belong to both clauses, and the sentence may be arranged thus: " To equip any vessel—with intent or in order " that such vessel shall be employed in the service of any Foreign " State as a transport or store ship, or—with intent to cruise or " commit hostilities—against any State," &c. If this construction be adopted, the Statute does not forbid a person to equip a vessel with intent or in order that such vessel shall be employed in the service of a Foreign State as a vessel of war against any State, &c. " Transport" and " store ship" alone are mentioned. Under the same circumstances, therefore, under which a store ship is prohibited, a vessel of war is not prohibited, though, in most cases, the vessel of war would be open to more objection than the store ship. An interpretation leading to such inconsistent legislation is admissible only if every other construction is grammatically impossible. But this is not the case. The construction is as grammatical, and the inconsistency is avoided, if we suppose that the words " with intent," when used the second time, introduce, not a second and co-ordinate clause, but merely a subordinate division of the kinds of vessels; and that, equally with the word " as," placed before " a transport or store ship," they depend grammatically upon the word " employed." The sentence then runs, " employed— " as a transport or store ship or—with intent to cruise or com- " mit hostilities." The meaning would have been more accurately expressed by the words " as a transport or store ship, or " vessel intended to cruise;" or by simply inserting the word ' vessel,' " as a transport or store ship or vessel with intent to " cruise or commit hostilities."

The history of the Act proves this to be the true interpretation. In the Bill originally laid before Parliament, the words, " as a transport or store ship" do not occur. The sentence stood, " to equip any vessel with intent or in order that such

" vessel shall be employed in the service of any Foreign Prince " with intent to cruise, &c." Sir James Mackintosh taunted the Government with their anti-neutral spirit in leaving out of the Bill the one sort of aid which England could give to Spain, but which, from the nature of things, she could not give to the Insurgent Provinces—a supply of transports for the purpose of conveying troops across the Atlantic. In consequence, the words, " as a transport or store ship" were thus awkwardly inserted. The framers of the Statute probably thought, if indeed they thought at all on the subject, that, as the words " with intent" when used the first time in the sentence, are accompanied by the words " or in order." and when used the second time are not accompanied by those words, the readers of the Statute would infer, that, when used the second time, they do not stand on the same footing as when used the first time, and do not introduce a distinct and co-ordinate clause.* This argument may not be admissible in a Court of Law, but ought to be of weight in a discussion in Parliament.

From the construction we pass on to the terms employed. The words of the Statute are, " to equip, furnish, fit out, or arm." Some observations made at the trial have occasioned a good deal of discussion as to the meaning of the word equip. It was observed, that, according to Webster's Dictionary, equipping is 'furnishing with arms'; and that furnishing is given in another Dictionary as the same thing as equipping. The word is of nautical origin. 'Schip,' the form in Low German of the High German 'schiff,' and our English 'ship,' was most probably the root of the Low Latin 'eschipare,' which became in French 'équiper.' From France the word crossed over to England, towards the end, as is said, of the sixteenth century.† Ménage says, " Equiper un vaisseau, c'est le fournir de ses " agrais, de ses apparaux, et de ses vituailles." The French Dictionary of the Academy says under the word:—" Il se dit " d'un vaisseau qu'on pourvoit de tout ce qui est nécessaire à " la manœuvre, à la subsistence, à la defense et à l'attaque,"

* Public Bills of 1819; Hansard's Debates, xl. 1100.

† Ménage; Du Cange; Skinner's Etymologicum; Barret's Alvearie, (A. D. 1580.)

&c. There is nothing, therefore, in the French derivation of the word, to limit its meaning.

On turning to the section under discussion, we shall see that the words are, "to equip, furnish, fit out, or arm a vessel, with in-"tent or in order that such vessel shall be employed as a transport "or store ship, &c." Nothing is said of the cargo to be put on board, the words apply to the vessel itself. Now transports and storeships are not built with the view of their carrying arms. The word 'arming' is almost inapplicable to them. The accompanying words must therefore have some meaning applicable to such vessels, and thus have a wider meaning than 'to arm.'

The use of the word 'equip,' in diplomatic documents and legal decisions, proves the same, and gives us some help in determining its exact meaning.

The twentieth Article of the Treaty of 1794 between England and the United States, the Treaty which I have mentioned before on the subject of compensation, contains a list of goods which it was agreed should be deemed contraband. The article is important, and constantly referred to. After enumerating "arms and im-"plements serving for the purposes of war by land and sea, such "as cannon, &c." it goes on to say, "also timber for ship-building, "lead or iron, copper in sheets, sails, hemp, and cordage, and "generally whatever may serve to the equipment of vessels, "(*Fr.* 'l'équipement'), unwrought iron and fir-planks only ex-"cepted." Equipment, therefore, is more than the supplying of arms; and 'to equip' is wider than 'to arm.' This is proved also by the use of the word 'equipment' in the phrases "port of naval equipment, "port of mercantile equipment," which constantly occur in the judgments of Lord Stowell, in passages where the context shows that 'equipment" embraces more than 'arming.'† From these authorities, no less than from the ordinary use of the term, "equipping a vessel of war" must be held to include "providing it with articles serviceable for war "whether used in its construction or outfit." And the most accurate legal explanation of articles serviceable for war, would

* Martens' Recueil, v. 674.

† e.g. The Charlotte, 5 C. Rob. 305.

seem to be the articles which the Courts of Law condemn as contraband, on the ground of their being of use in war: (*bellici usus*). If this reasoning is correct, every piece of timber and every plate of iron forms part of an illegal equipment.

The eighth section will assist us in interpreting the seventh section. It forbids the augmenting the force of any belligerent vessel in our harbours by "the addition of any equipment for war." We have seen that the legislation is intended to enforce, by municipal sanctions, the observance of international morality. Has international morality prescribed any rule on this point? If it has, the rule will form a clue to the meaning of the section. Now there is a conventional rule on this point, firmly established and well defined. The usage of nations has attached certain conditions to the reception of belligerent vessels in neutral ports. The duties of hospitality and the duties of neutrality are thus both discharged. Belligerent vessels are allowed an asylum in neutral waters from chase or the perils of the sea, and for the purpose of procuring provisions or other innocent articles. But no violation of the sanctity of the territory is allowed. The belligerent owes it to the neutral not to attempt the violation: the neutral owes it to the other belligerent not to allow the violation. One such violation is considered to be the augmenting the force of the vessel. This act is prohibited. The rules of different nations are expressed in different terms, but in principle they are the same. In the last Russian war, the King of Denmark issued Letters Patent on the subject of neutrality, which contained the views of the Courts of Copenhagen and of Stockholm. Under them, the vessels of the belligerent powers were allowed to procure, in the ports of Denmark, all the provisions and articles of merchandise which they might need, excepting articles "considered contraband of war;" and contraband of war was defined to include "all manufactured articles (*Fr.* fabrications) "which may serve directly to the use of war."* We need not repeat the American rules of 1793. Our own rules prohibit

* Lettre Patente concernant la rentrée en vigueur de l'ordonnance royale du 4 Mai, 1803—Copenhague, Ap. 20, 1854.

any ship of war of either belligerent from making any use of any port within the jurisdiction of the Crown "as a station or "place of resort for any warlike purpose, or for the purpose of "obtaining any facilities of warlike equipment." She is to be required to put to sea within twenty-four hours after her entrance into such port, "except in case of stress of weather, or "of her requiring provisions or things necessary for the subsis- "tence of her crew, or necessary repairs." She is not permitted "to take in any supplies except provisions and such other things "as may be requisite for the subsistence of her crew, and except "coal sufficient to carry her to the nearest port of her own "country."* The use of the words, "warlike equipment" in these rules will explain "the equipment of war" in the eighth section. It is worth observing, that the same case of guns which may legally be consigned by the manufacturer at Birmingham to the merchant at New York, cannot legally be delivered to the captain of a Federal ship of war who has sought the asylum of the port of Liverpool. The first transaction comes under the general rule respecting contraband; the second under the rule prohibiting the use of neutral territory in aid of warlike purposes. And it is difficult to conceive that a statute, which, in the eighth section, forbids the warlike repairs of a vessel in our ports, should, in the seventh section, allow the original warlike construction of a vessel in our ports, for a belligerent.

We have seen throughout these two propositions put together: First, a neutral nation is not bound to prevent the departure from its shores, for a belligerent Power, of contraband of war; and, Secondly, a neutral nation is bound to prevent the departure from its shores of an armament intended to operate against one of the belligerents. Mr. Canning speaks of the "combined elements of an armament;" Mr. Jefferson uses the word "equipment." The two propositions thus placed together may suggest the answer to a question constantly asked: what is the difference between a gun and a ship? A gun comes in most cases under the first proposition: a ship, in most cases, under the second. The first is a mere instrument of war; the second is an organised combi-

* N. American Papers, No. 1 (1862), p. 140.

nation of instruments; or as Lord Stowell says, "contraband ready made up." The one is, in general, useless till it has reached the country of the belligerent to whom it is consigned; the other may be in a state to commit hostilities, if not immediately on leaving the waters of the neutral country, certainly, by a little contrivance, without ever going to its own country. In the matter of contraband, the law of nations leaves the belligerent to take care of himself. He has the right to seize the contraband on the transit (*in transitu*). Transit would seem to involve the notion of a destination prior to the use of the article. The gun has such a destination. The ship may be without it. For instance, it would be a misuse of terms to say that the destination of the Alabama was to the Confederate States. The gun runs the risk of transport before being available for war. The ship may set forth from the neutral port to commit hostilities without having incurred this risk. The rule of contraband is in favour of peace, because it brings the belligerent into collision with the individual merchant who is carrying the contraband, and not with the neutral nation from which the contraband has come. But if the contraband elements are combined on the neutral territory, or so far combined as really to give a warlike character to the combination, the protection of the neutral territory is used by the one belligerent to avoid or diminish the risks attached generally to the transport of contraband, and thus to impede the exercise of the right of seizure, on which the other belligerent relies for self-defence. The result is, that the latter, instead of having no one but himself to blame if he fails to seize on the voyage the contraband articles belonging to the individual merchant, must complain to the neutral nation of the use made of the neutral territory. He is thus brought into collision with the neutral country, and not with the individual merchant, and the policy of the rule respecting contraband in favour of peace is so far defeated. It may, no doubt, be possible to put cases in which this distinction between a gun and a ship nearly, if not completely, vanishes; but the distinction applies, I think, to the majority of cases, and it is to the majority of cases, and not to exceptions, that we must look. Should,

however, these differences appear fine-drawn and unsatisfactory, there remains a broad difference between the two, which is shown in practice. The belligerent who wishes to prevent the importation of contraband articles into the country of his enemy, will attain his object most successfully by blockading the ports of his enemy; but if he wishes to protect himself from a ship which sets forth from a neutral port to commit hostilities, he must keep watch off the neutral port. These reasons may explain why a ship should not be left merely to the rule of contraband, but subjected to special legislation.

A gun, we have seen, if used to augment the force of a belligerent vessel in our waters, passes from the operation of the general rule of contraband, and comes under the eighth section of this Act;—conversely, can a vessel pass from under the seventh section and be left to the general rule of contraband? In other words—can the sale of a vessel of war ever be a simple sale of contraband? Under certain circumstances it can. Obviously, if the vessel is constructed in the neutral country, in pieces, to be put together in the enemy's country, as the steamers on the Italian Lakes are made at Zurich and put together on the borders of the Lakes, the pieces are simply contraband. Again, the Independencia and the Bolivar, the American vessels already mentioned, suggest another case. In both instances, the owners of the vessels displayed such indecision before leaving the United States as fairly to prove an absence of that intent with regard to the employment of their vessels which is essential to the offence under both the American and the English Statutes. Hence the owners did not come within the American Act, and their vessels were simply contraband merchandise, liable to seizure by Spanish ships on the voyage to Buenos Ayres. These instances show that there is a class of such cases; but they must, I think, be considered as the exceptions. The general rule to be adopted when England is neutral, must be sought in the Statute. If the interpretation proposed above is correct, the Statute in express terms forbids any person to equip, furnish, fit out, or arm, or to attempt or endeavour to equip, furnish, fit out, or arm; or to procure to be

equipped, furnished, fitted out, or armed; or knowingly to aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any vessel, with intent or in order that such vessel shall be employed in the service of any Foreign State against any State with which Her Majesty is not at war. It seems difficult to invent a form of words more clearly prohibiting a contract for equipping a vessel of war for either belligerent. The Statute does not wait till the equipment is finished, it forbids the attempt; and the offence of attempting to equip must be deemed complete, when the construction is sufficiently advanced to show the character of the vessel. The contract for the equipment may be called a mercantile contract. So would be a contract to supply guns for the belligerent vessel which had entered one of our harbours, or to do warlike repairs on board of her, which we have seen to be illegal. Similarly, this transaction seems to be rendered illegal, as "prejudicial to and tending to endanger the peace and welfare of this kingdom." It may even be admitted, that the transaction has more of a mercantile character now than at the time of the passing of the Statute, because private yards are more used by all Governments for building ships of war, and, therefore, such ships must be considered as more than formerly articles of commerce; but the equipment is not the less tainted with the vice of being a hostile act, commenced within a neutral country. The principle is clear, that it is a violation of neutral territory to commence a hostile act there, for it converts the neutral territory into a station of hostility. It is no less clear, that it is the duty as well as the right of a neutral nation to repress such violations of its territory. The Foreign Enlistment Act, upon the testimony of Mr. Canning, was passed to give the Crown the power of repressing them. I venture to express an opinion that the Foreign Enlistment Act does give the Crown this power, and that the language and the policy of the Statute concur to prevent the ports of England from being made either directly or indirectly stations of hostility.

The suggestions thus offered may be erroneous. Flaws, unde-

tected by myself, may lurk in the arguments. The subject is, as I have said, one of difficulty. With this consciousness, I have kept asunder what is my own, and what is not my own,—the suggestions and the materials collected. If the suggestions are of little value, I still hope that the materials may assist others in forming more correct conclusions.

2, Harcourt Buildings, Temple.
November, 1863.

APPENDIX.

59 Geo. III. c. 69.

An Act to prevent the Enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the fitting out or equipping, in His Majesty's Dominions, Vessels for Warlike Purposes without His Majesty's Licence.

[3d *July* 1819.]

WHEREAS the Enlistment or Engagement of His Majesty's Subjects to serve in War in Foreign Service, without His Majesty's Licence, and the fitting out and equipping and arming of Vessels by His Majesty's Subjects, without his Majesty's Licence, for Warlike Operations in or against the Dominions or Territories of any Foreign Prince, State, Potentate, or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or part of any Province, or against the Ships, Goods, or Merchandise of any Foreign Prince, State, Potentate, or Persons as aforesaid, or their Subjects, may be prejudicial to and tend to endanger the Peace and Welfare of this Kingdom: And whereas the Laws in force are not sufficiently effectual for preventing the same: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, an Act passed in the Ninth Year of the Reign of His late Majesty King *George* the Second, intituled *An Act to prevent the listing His Majesty's Subjects to serve as Soldiers without His Majesty's Licence;* and also an Act passed in the Twenty-ninth Year of the Reign of His said late Majesty King *George* the Second, intituled *An Act to prevent His Majesty's Subjects from serving as Officers under the* French *King; and for better enforcing an Act passed in the Ninth Year of His present Majesty's Reign, to prevent the enlisting His Majesty's Subjects to serve as Soldiers without His Majesty's Licence; and for obliging such of His Majesty's Subjects as shall accept Commissions in the* Scotch *Brigade in the Service of the States General of the United Provinces, to take the Oaths of Allegiance and Abjuration;* and also an Act passed in *Ireland* in the Eleventh Year of the Reign of His said late Majesty King *George* the Second, intituled *An Act for the more effectual preventing the enlisting of His Majesty's Subjects to serve as Soldiers in Foreign Service without His Majesty's Licence;* and also an Act passed in *Ireland* in the Nineteenth Year of the Reign of His said late Majesty King *George* the Second, intituled *An Act for the more effectual preventing His Majesty's subjects from entering into Foreign Service, and for publishing an Act of the Seventh Year of King* William *the Third, intituled 'An Act to prevent Foreign Education;'* and all

9 G. 2, c. 30.

29 G. 2, c. 17.

Irish Act, 11 G. 2

Irish Act, 19 G. 2

Recited Acts repealed.

and every the Clauses and Provisions in the said several Acts contained, shall be and the same are hereby repealed.

Subjects enlisting or engaging to enlist or serve in Foreign Service, military or naval, guilty of Misdemeanor.

II. And be it further declared and enacted, That if any natural-born Subject of his Majesty, His Heirs and Successors, without the Leave or Licence of His Majesty, His Heirs or Successors, for that Purpose first had and obtained, under the Sign Manual of His Majesty, His Heirs or Successors, or signified by Order in Council, or by Proclamation of His Majesty, His Heirs or Successors, shall take or accept, or shall agree to take or accept, any Military Commission, or shall otherwise enter into the Military Service as a Commissioned or Non-Commissioned Officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a Soldier, or to be employed or shall serve in any Warlike or Military Operation, in the Service of or for or under or in Aid of any Foreign Prince, State, Potentate, Colony, Province, or part of any Province or People, or of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or Part of any Province or People, either as an Officer or Soldier, or in any other Military Capacity; or if any natural-born Subject of His Majesty shall, without such Leave or Licence as aforesaid, accept, or agree to take or accept, any Commission, Warrant, or Appointment as an Officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a Sailor or Marine, or to be employed, or engaged, or shall serve in and on board any Ship or Vessel of War, or in and on board any Ship or Vessel used or fitted out, or equipped or intended to be used for any Warlike Purpose, in the Service of or for or under or in Aid of any Foreign Power, Prince, State, Potentate, Colony, Province, or Part of any Province or People, or of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or Part of any Province or People: or if any natural-born Subject of His Majesty shall, without such Leave and Licence as aforesaid, engage, contract, or agree to go, or shall go to any Foreign State, Country, Colony, Province, or Part of any Province, or to any place beyond the Seas, with an Intent or in order to enlist or enter himself to serve, or with Intent to serve in any Warlike or Military Operation whatever, whether by Land or by Sea, in the Service of or for or under or in Aid of any Foreign Prince, State, Potentate, Colony, Province, or Part of any Province or People, or in the Service of or for or under or in Aid of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or Part of any Province or People, either as an Officer or a Soldier, or in any other Military Capacity, or as an Officer or Sailor, or Marine, in any such Ship or Vessel as aforesaid, although no enlisting Money or Pay or Reward shall have been or shall be in any or either of the Cases aforesaid actually paid to or received by him, or by any Person to or for his Use or Benefit; or if any Person whatever, within the United Kingdom of *Great Britain* and *Ireland*, or in any Part of His Majesty's Dominions elsewhere, or in any Country, Colony, Settlement, Island, or Place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure any Person or Persons whatever to enlist, or to enter or engage to enlist,

All Persons retaining or procuring others to enlist, guilty of the like Offence.

or to serve or to be employed in any such Service or Employment as aforesaid, as an Officer, Soldier, Sailor, or Marine, either in Land or Sea Service, for or under or in aid of any Foreign Prince, State, Potentate, Colony, Province, or part of any Province or People, or for or under or in Aid of any Person or Persons exercising or assuming to exercise any Powers of Government as aforesaid, or to go or agree to go or to embark from any part of His Majesty's Dominions for the Purpose or with Intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting Money, Pay, or Reward shall have been or shall be actually given or received, or not; in any or either of such Cases, every Person so offending shall be deemed guilty of a Misdemeanor, and upon being convicted thereof, upon any Information or Indictment, shall be punishable by Fine and Imprisonment, or either of them, at the Discretion of the Court before which such Offender shall be convicted.

Act not to extend to Persons enlisted or serving before the Time herein specified.

III. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to render any Person or Persons liable to any Punishment or Penalty under this Act, who at any time before the First Day of *August* One thousand eight hundred and nineteen, within any Part of the United Kingdom, or of the Islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, or at any Time before the First Day of *November* One thousand eight hundred and nineteen, in any Part or Place out of the United Kingdom, or of the said Islands, shall have taken or accepted, or agreed to take or accept any Military Commission, or shall have otherwise enlisted into any Military Service as a Commissioned or Non-commissioned Officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a Soldier, or shall have served, or having so served shall, after the said First Day of *August* One thousand eight hundred and nineteen, continue to serve in any Warlike or Military Operation, either as an Officer or Soldier, or in any other Military Capacity, or shall have accepted, or agreed to take or accept any Commission, Warrant, or Appointment as an Officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a Sailor, or Marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the said First Day of *August*, continue to serve in and on board any Ship or Vessel of War, used or fitted out, or equipped or intended for any Warlike Purpose; or shall have engaged, or contracted, or agreed to go, or shall have gone to, or having so gone to shall, after the said First Day of *August*, continue in any Foreign State, Country, Colony, Province, or Part of a Province, or to or in any Place beyond the Seas, unless such Person or Persons shall embark at or proceed from some Port or Place within the United Kingdom, or the Islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, with Intent to serve as an Officer, Soldier, Sailor, or Marine, contrary to the Provisions of this Act, after the said First Day of *August*, or shall embark or proceed from some Port or Place out of the United Kingdom, or the Islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, with Intent as aforesaid, after the said First Day of *November*, or who shall before the passing of this Act, and within the said United Kingdom, or the said Islands, or before the First

Day of *November* One thousand eight hundred and nineteen, in any Port or Place out of the said United Kingdom, or the said Islands, have hired, retained, engaged, or procured, or attempted or endeavoured to hire, retain, engage, or procure, any Person or Persons whatever, to enlist or to enter, or to engage to enlist or to serve, or be employed in any such Service or Employment as aforesaid, as an Officer, Soldier, Sailor, or Marine, either in Land or Sea Service, or to go, or agree to go or embark for the Purpose or with the Intent to be so enlisted, entered, or engaged, or employed, contrary to the Prohibitions respectively in this Act contained, anything in this Act contained to the contrary in anywise notwithstanding; but that all and every such Persons and Person shall be in such State and Condition, and no other, and shall be liable to such Fines, Penalties, Forfeitures, and Disabilities, and none other, as such Person or Persons was or were liable and subject to before the passing of this Act, and as such Person or Persons would have been in, and been liable and subject to, in case this Act and the said recited Acts by this Act repealed had not been passed or made.

Justices to issue Warrants for the Apprehension of Offenders.

IV. And be it further enacted, That it shall and may be lawful for any Justice of the Peace residing at or near to any Port or Place within the United Kingdom of *Great Britain* and *Ireland*, where any Offence made punishable by this Act as a Misdemeanor shall be committed, on Information on Oath of any such Offence, to issue his Warrant for the Apprehension of the Offender, and to cause him to be brought before such Justice, or any Justice of the Peace; and it shall be lawful for the Justice of the Peace before whom such Offender shall be brought, to examine into the Nature of the Offence upon Oath, and to commit such Person to Gaol, there to remain until delivered by due Course of Law, unless such Offender shall give Bail, to the Satisfaction of the said Justice, to appear and answer to any Information or Indictment to be preferred against him, according to Law, for the said Offence; and that all such Offences which shall be committed within that Part of the United Kingdom called *England*, shall and may be proceeded and tried in His Majesty's Court of King's Bench at *Westminster*, and the Venue in such Case laid at *Westminster*, or at the Assizes or Session of Oyer and Terminer and Gaol Delivery, or at any Quarter or General Sessions of the Peace in and for the County or Place where such Offence was committed; and that all such Offences which shall be committed within that Part of the United Kingdom called *Ireland*, shall and may be prosecuted in His Majesty's Court of King's Bench at *Dublin*, and the Venue be laid at *Dublin*, or at any Assizes or Session of Oyer and Terminer and Gaol Delivery, or at any Quarter or General Sessions of the Peace in and for the County or Place where such Offence was committed; and all such Offences as shall be committed in *Scotland*, shall and may be prosecuted in the Court of Justiciary in *Scotland*, or any other Court competent to try Criminal Offences committed within the County, Shire, or Stewartry within which such Offence was committed; and where any Offence made punishable by this Act as a Misdemeanor shall be committed out of the said United Kingdom, it shall be lawful for any Justice of the Peace residing near to

Where Offences shall be tried.

Port or Place where such Offence shall be committed, an Information on Oath of any such Offence, to issue his Warrant for the Apprehension of the Offender, and to cause him to be brought before such Justice, or any other Justice of the Peace for such Place; and it shall be lawful for the Justice of the Peace before whom such Offender shall be brought, to examine into the Nature of the Offence upon Oath, and to commit such Person to Gaol, there to remain till delivered by due Course of Law, or otherwise to hold such Offender to Bail to answer for such Offence in the Superior Court competent to try and having Jurisdiction to try Criminal Offences committed in such Port or Place; and all such Offences committed at any Place out of the said United Kingdom shall and may be prosecuted and tried in any Superior Court of His Majesty's Dominions competent to try, and having Jurisdiction to try Criminal Offences committed at the Place where such Offence shall be committed.

Vessels with Persons on board engaged in Foreign Service, may be detained at any Port in His Majesty's Dominions.

V. And be it further enacted, That in case any Ship or Vessel in any Port or Place within His Majesty's Dominions shall have on board any such Person or Persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from His Majesty's Dominions for the Purpose and with the Intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the Service of any Foreign Prince, State, or Potentate, Colony, Province, or part of any Province or People, or of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Colony, Province, or Part of any Province or People, either as an Officer, Soldier, Sailor, or Marine, contrary to the Provisions of this Act, it shall be lawful for any of the principal Officers of His Majesty's Customs where any such Officers of the Customs shall be, and in any Part of His Majesty's Dominions in which there are no Officers of His Majesty's Customs, for any Governor or Persons having the Chief Civil Command, upon Information on Oath given before them respectively, which Oath they are hereby respectively authorized and empowered to administer, that such Person or Persons as aforesaid is or are on board such Ship or Vessel, to detain and prevent any such Ship or Vessel, or to cause such Ship or Vessel to be detained and prevented from proceeding to Sea on her Voyage with such Persons as aforesaid on board: Provided nevertheless, that no principal Officer, Governor, or Person shall act as aforesaid, upon such Information upon Oath as aforesaid, unless the Party so informing shall not only have deposed in such Information that the Person or Persons on board such Ship or Vessel hath or have been enlisted or entered to serve, or hath or have engaged or agreed or been procured to enlist or enter or serve, or is or are departing, as aforesaid, for the Purpose and with the Intent of enlisting or entering to serve or to be employed, or of serving, or being engaged or employed in such Service as aforesaid, but shall also have set forth in such Information upon Oath, the Facts or Circumstances upon which he forms his Knowledge or Belief, enabling him to give such Information upon Oath; and that all and every Person and Persons convicted of wilfully false swearing in any such Informa-

Oath to be made as to Facts and Circumstances.

tion upon Oath, shall be deemed guilty of and suffer the Penalties on Persons convicted of wilful and corrupt Perjury.

Penalty on Masters of Ships, &c. taking on board Persons enlisted contrary to this Act, £50 for each Person.

VI. And be it further enacted, That if any Master or other Person having or taking the Charge or Command of any Ship or Vessel, in any Part of the United Kingdom of *Great Britain* and *Ireland*, or in any Part of His Majesty's Dominions beyond the Seas, shall knowingly and willingly take on board, or if such Master or other Person having the Command of any such Ship or Vessel, or any Owner or Owners of any such Ship or Vessel, shall knowingly engage to take on board any Person or Persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from His Majesty's Dominions for the Purpose and with the Intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any Naval or Military Service, contrary to the Provisions of this Act, such Master or Owner or other Person as aforesaid shall forfeit and pay the Sum of Fifty Pounds for each and every such Person so taken or engaged to be taken on board; and moreover every such Ship or Vessel, so having on board, conveying, carrying, or transporting any such Person or Persons, shall and may be seized and detained by the Collector, Comptroller, Surveyor, or other Officer of the Customs, until such Penalty or Penalties shall be satisfied and paid, or until such Master or Person, or the Owner or Owners of such Ship or Vessel, shall give good and sufficient Bail, by Recognizance before one of His Majesty's Justices of the Peace, for the Payment of such Penalty or Penalties.

Penalty on Persons fitting out armed Vessels to aid in Military Operations with any Foreign Powers without Licence;

VII. And be it further enacted, That if any Person, within any Part of the United Kingdom, or in any Part of His Majesty's Dominions beyond the Seas, shall, without Leave and License of His Majesty for that Purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any Ship or Vessel, with Intent or in order that such Ship or Vessel shall be employed in the Service of any Foreign Prince, State, or Potentate, or of any Foreign Colony, Province, or Part of any Province or People, or of any Person or Persons exercising or assuming to exercise any Powers of Government in or over any Foreign State, Colony, Province, or Part of any Province or People, as a Transport or Store Ship, or with Intent to cruize or commit Hostilities against any Prince, State, or Potentate, or against the Subjects or Citizens of any Prince, State, or Potentate, or against the Persons exercising or assuming to exercise the Powers of Government in any Colony, Province, or Part of any Province or Country, or against the Inhabitants of any Foreign Colony, Province, or Part of any Province or Country with whom His Majesty shall not then be at War; or shall within the United Kingdom, or any of His Majesty's Dominions, or in any Settlement, Colony, Territory, Island, or Place, belonging or subject to His Majesty, issue or deliver any Commission for any Ship or Vessel, to the Intent that such Ship or Vessel shall be employed as aforesaid, every such Person so offending shall be deemed

or issuing Commissions to Ships.

guilty of a Misdemeanor, and shall, upon Conviction thereof, upon any Information or Indictment, be punished by Fine and Imprisonment, or either of them, at the Discretion of the Court in which such Offender shall be convicted; and every such Ship or Vessel, with the Tackle, Apparel, and Furniture, together with all the Materials, Arms, Ammunition, and Stores, which may belong to or be on board of any such Ship or Vessel, shall be forfeited; and it shall be lawful for any Officer of His Majesty's Customs or Excise, or any Officer of His Majesty's Navy, who is by Law empowered to make Seizures for any Forfeiture incurred under any of the Laws of Customs or Excise, or the Laws of Trade and Navigation, to seize such Ships and Vessels aforesaid, and in such Places and in such Manner in which the Officers of His Majesty's Customs or Excise and the Officers of His Majesty's Navy are empowered respectively to make Seizures under the Laws of Customs and Excise, or under the Laws of Trade and Navigation; and that every such Ship and Vessel, with the Tackle, Apparel, and Furniture, together with all the Materials, Arms, Ammunition, and Stores which may belong to or be on board of any such Ship or Vessel, may be prosecuted and condemned in the like Manner, and in such Courts as Ships or Vessels may be prosecuted and condemned for any Breach of the Laws made for the Protection of the Revenues of Customs and Excise, or of the Laws of Trade and Navigation.

Penalty for aiding the Warlike Equipment of Vessels of Foreign States, &c.

VIII. And be it further enacted, That if any Person in any Part of the United Kingdom of *Great Britain* and *Ireland*, or in any Part of His Majesty's Dominions beyond the Seas, without the Leave and License of His Majesty for that Purpose first had and obtained as aforesaid, shall, by adding to the Number of the Guns of such Vessel, or by changing those on board for other Guns, or by the Addition of any Equipment for War, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the Warlike Force of any Ship or Vessel of War, or Cruizer, or other armed Vessel which at the Time of her Arrival in any Part of the United Kingdom, or any of His Majesty's Dominions, was a Ship of War, Cruizer, or armed Vessel in the Service of any Foreign Prince, State, or Potentate, or of any Person or Persons exercising or assuming to exercise any Powers of Government in or over any Colony, Province, or part of any Province or People belonging to the Subjects of any such Prince, State, or Potentate, or to the Inhabitants of any Colony, Province, or Part of any Province or Country under the Control of any Person or Persons so exercising or assuming to exercise the Powers of Government, every such Person so offending shall be deemed guilty of a Misdemeanor, and shall, upon being convicted thereof, upon any Information or Indictment, be punished by Fine and Imprisonment, or either of them, at the Discretion of the Court before which such Offender shall be convicted.

Offences committed out of the Kingdom may be tried at Westminster.

IX. And be it further enacted, That Offences made punishable by the Provisions of this Act, committed out of the United Kingdom, may be prosecuted and tried in His Majesty's Court of King's

Bench at *Westminster*, and the Venue in such Case laid at *Westminster* in the County of *Middlesex*.

How Penalties shall be sued for and recovered.

X. And be it further enacted, That any Penalty or Forfeiture inflicted by this Act may be prosecuted, sued for, and recovered, by Action of Debt, Bill, Plaint, or Information, in any of His Majesty's Courts of Record at *Westminster* or *Dublin*, or in the Court of Exchequer, or in the Court of Session in *Scotland*, in the Name of His Majesty's Attorney-General for *England* or *Ireland*, or His Majesty's Advocate for *Scotland* respectively, or in the name of any Person or Persons whatsoever; wherein no Essoign, Protection, Privilege, Wager of Law, nor more than One Imparlance shall be allowed: and in every Action or Suit the Person against whom Judgment shall be given for any Penalty or Forfeiture under this Act shall pay Double Costs of Suit; and every such Action or Suit shall and may be brought at any Time within Twelve Months after the Offence committed, and not afterwards; and One Moiety of every Penalty to be recovered by Virtue of this Act shall go and be applied to His Majesty, His Heirs and Successors, and the other Moiety to the Use of such Person or Persons as shall first sue for the same, after deducting the Charges of Prosecution from the whole.

Double Costs.

Limitation of Actions.

Former Rules established by Law to be applied to Actions commenced in pursuance of this Act.

XI. And be it further enacted, That if any Action or Suit shall be commenced, either in *Great Britain* or elsewhere, against any Person or Persons for anything done in pursuance of this Act, all Rules and Regulations, Privileges and Protections, as to maintaining or defending any Suit or Action, and pleading therein, or any Costs thereon, in relation to any Acts, Matters, or Things done, or that may be done by any Officer of Customs or Excise, or by any Officer of His Majesty's Navy, under any Act of Parliament in force on or immediately before the passing of this Act, for the Protection of the Revenues of Customs and Excise, or Prevention of Smuggling, shall apply and be in full Force in any such Action or Suit as shall be brought for anything done in pursuance of this Act, in as full and ample a Manner to all Intents and Purposes as if the same Privileges and Protections were repeated and re-enacted in this Act.

Penalties not to extend to Persons entering into Military Service in Asia.

XII. Provided always and be it further enacted, That nothing in this Act contained shall extend or be construed to extend, to subject to any Penalty any Person who shall enter into the Military Service of any Prince, State, or Potentate in *Asia*, with Leave or Licence, signified in the usual Manner, from the Governor-General in Council, or Vice-President of *Fort William* in *Bengal*, or in conformity with any Orders or Regulations issued or sanctioned by such Governor-General or Vice-President in Council.